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Maryland.
CONSTITUTIONAL CONVENTION COMMISSION,

COMMISSION MEETING

University of Maryland School of Law
Baltimore, Maryland

November 21, 1966

VOLUME X

CONSTITUTIONAL CONVENTION COMMISSION

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L. MERCER SMITH

JAMES O'C. GENTRY

MELVIN J. SYKES

JOHN R. HARGROVE

FURMAN L. TEMPLETON

WILLIAM C. WALSH

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JOHN C. BROOKS
Executive Director

KALMAN R. HETTLEMAN
Assistant to the Executive Director

* * * * *

William Prescott Allen (*Resigned January 5, 1966*)

Ernest N. Cory, Jr. (*Resigned May 13, 1966*)

Walter R. Haile (*Resigned December 20, 1966*)

William J. McWilliams (*Resigned September 10, 1965*)

Ridgely P. Melvin, Jr. (*Resigned August 2, 1966*)

George L. Russell, Jr. (*Resigned July 12, 1966*)

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700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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AND DECLARATION OF RIGHTS

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Leah S. Freedlander
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(appointed on July 12, 1966)
Stanford Hoff
John W. Mitchell
(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

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(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until
July 12, 1966)

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William C. Walsh
(served until June 6, 1966)
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Lawrence F. Rodowsky, Reporter

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William J. McWilliams
(served as Chairman until
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Ridgely P. Melvin, Jr.
(served as Chairman from
September 10, 1965 to
August 2, 1966)
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(served until July 12, 1966)
E. Phillip Sayre
(served until June 6, 1966)
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(served until June 6, 1966)
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Leah S. Freedlander
Clarence W. Miles
(served as Chairman until
December 2, 1965)
L. Mercer Smith
John B. Howard, Reporter
(appointed on May 12, 1966)

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E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to
December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
Ridgely P. Melvin, Jr.
(served until August 2, 1966)
Furman L. Templeton
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John Martin Jones, Jr.
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(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966
to December 20, 1966)
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(served until June 6, 1966)
Frank A. DeCosta, Jr.
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Hal C. B. Clagett
(served until June 6, 1966)

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Hal C. B. Clagett
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E. Phillip Sayre
Eugene Pitrof, Reporter

* * * *

Franklin L. Burdette
(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

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Commission held on Monday, November 21, 1966, at 10 a.m.,
at the University of Maryland Law School, Baltimore,
Maryland.

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
Mr. Charles Della, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Connor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
Stanford Hoff, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
John W. Mitchell, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Dr. Furman I. Templeton, Member

Court Reports

1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. Clinton Ivan Winslow, Consultant
4 Mr. Robert Loevy, Consultant
5 Mrs. Margaret Kostritsky, Reporter
6 Mrs. Ronald Fishbein, Staff Member
7 Mr. Kalman Hettleman, Staff Member
8 Mr. Eugene Pitrof, Reporter

9 -----

10 THE CHAIRMAN: You have been handed this
11 morning a staff memorandum of November 21. While waiting
12 for one or two people whom I expect I would suggest that
13 you could read that with profit because it will make it
14 a little easier to discuss the report of the Committee
15 a little later in the morning.

16 (Discussion off the record.)

17 THE CHAIRMAN: I thought Judge Adkins
18 would be here by now but he must have been delayed. We
19 better go ahead.

20 As all of you know, the minutes of the
21 last two meetings have not been circulated, September
and October meetings. This is because of the difficulty
in getting the transcripts analyzed and sufficient memoranda
prepared for the preparation of the minutes. We have gotten

1 some additional assistance, as you will learn about
2 in a few minutes, and this work is now moving forward
3 rather briskly. We have not yet formally approved
4 minutes of the August meeting because I understood
5 Judge Adkins had a correction he wanted to suggest.
6 Since he is not here, we will again pass the approval
7 of those minutes.

8 Report of the Secretary.

9 MR. MARTINEAU: Nothing.

10 THE CHAIRMAN: Report of the Executive
11 Director.

12 MR. BROOKS: The Chairman has mentioned we
13 had some changes in the staff since the last meeting.
14 As some of you are aware, we had a rather large group
15 involved in research during the summer, primarily under
16 the Federal grant we had, graduate students from
17 political science and law students. Most of these
18 students have returned to school at this point. We
19 do have one who is a graduate of the University of
20 Maryland Law School still with us, Ken Lassen, with us
21 this morning. In addition, we have employed Mrs. Ronald

1 Fishbein, with us this morning, I would like to intro-
2 duce her, who will be helping us in research and also
3 putting together the report of the Commission we hope
4 to have assembled and delivered to the Governor in
5 January. To help us with a number of administrative
6 matters and also working on going through some of the
7 transcripts of recent meetings, to write the preliminary
8 notes for minutes of those meetings, we have employed
9 Kalman Hettleman, known as Buzzy, who will be with us
10 also for the next three or four months. I would
11 like to introduce him.

12 Mr. Eney and I attended the National
13 Municipal League Annual Meeting in Boston the first
14 three days of this past week. There Mr. Eney gave one
15 of the principal papers dealing with preparation for
16 Constitutional Convention. I wish all of you could
17 have been there for that. This was an area of vital
18 importance and interest of many of the people partici-
19 pating because so many states are contemplating Consti-
20 tutional Conventions.

21 Some of you are aware probably that Kentucky,

1 which did not have a convention but had a Constitution
2 voted on Tuesday a week ago, which had been drafted
3 by a Commission, then submitted to the General Assembly,
4 which approved it, referred it to the public for
5 referendum, was defeated by a vote of something like
6 four to one.

7 The Florida experience, at the moment we
8 have distributed to all of you copies of the Florida
9 Constitution. That one also was one not drafted by a
10 Constitutional Convention. It was not voted on last
11 election Tuesday a week ago but will be submitted some-
12 time in February or March to a special referendum of
13 the public. Indications gleaned from talking with
14 persons at this particular meeting were that there is
15 very little hope that this Constitution will be ratified
16 either. The anticipation is that it will be defeated
17 by at least a two to one vote.

18 I mentioned previously the experience in
19 Rhode Island. That Convention is still in progress,
20 has been since December, '64. The experience there is
21 that they hope to complete their redraft of a Constitution

1 before long although it is still only involving about
2 four major changes from the present Constitution. The
3 hope there is very dim. They aren't anticipating
4 anything like a two to one defeat, they think it will
5 be somewhat larger than that.

6 Not to be discouraging, but this gives you
7 an idea of why so many states are interested in this
8 kind of work at the moment.

9 MRS. BOTHE: I wondered if you had an idea
10 why in Kentucky, what were the main issues?

11 MR. BROOKS: Apparently in Kentucky besides
12 the political factors there was a lot of hostility to
13 the very method of drawing up the Constitution. It
14 was thought that this product of a Blue Ribbon Commission,
15 which then was not considered by a convention itself,
16 was not representative of what most people thought
17 they wanted. It was suspect to say the least.

18 DR. BURDETTE: Should have one note of
19 optimism. Amendments proposed and reported by a
20 Citizens Commission in Tennessee were adopted. The one
21 that went through another process lost.

1 MR. BROOKS: There were also sessions at
2 this particular convention in Boston dealing with the
3 holding of a Constitutional Convention and again it was
4 reiterated by those who participated in the Michigan
5 as well as the Rhode Island Conventions that we would
6 do well in proposing a sound set of rules before the
7 Convention meets which they can survey and then adopt
8 or change as they see fit because of their experiences
9 with trying to write the rules after they assembled
10 to begin the work of the Convention itself.

11 There were also sessions dealing with
12 metropolitan government and problems in this area
13 in strengthening the executive branch of the government.
14 The Chairman probably will like to expand on some of
15 these sessions as well as perhaps some of the private
16 conversations with persons at this meeting.

17 We had an opportunity to talk to some of
18 those persons who have been consultant to this group
19 before. For instance, Dr. John Wheeler was in attendance,
20 as well as persons we hope to also involve in a seminar
21 on problems of regional and metropolitan government
~~that we hope to sponsor in the near future.~~

1 I might suggest any of the Committees that
2 have not planned to do so that it would be very helpful
3 if all Committees of this Commission could have, if they
4 plan to have another meeting, something close to a
5 final meeting of the Committee within the next two
6 weeks so that we can have a final report from each of
7 the Committees that has not submitted one.

8 At this point it becomes imperative that
9 we draw together the final reports of each of the
10 Committees if we are to have a report even by the end
11 of January. We think it very important that we now
12 report to the Governor before he leaves office. Thank
13 you.

14 MR. MILLER: With all the bad political
15 news, I wondered if any of those states had a pre-
16 convention referendum or anything to sort of soften the
17 way?

18 MR. BROOKS: No, sir.

19 THE CHAIRMAN: Not one.

20 MR. MILLER: We have at least got that.

21 THE CHAIRMAN: I would like to add a few

1 comments to what Mr. Brooks has said about some of the
2 things we learned at the Boston conference.

3 I came away with two very strong impressions.
4 One of which was a matter of considerable disappointment.
5 The other, if anything I suppose, was a matter of some
6 relief.

7 The first was that we were able to get just
8 no suggestions at all as to the formulation of our
9 report or our work book or even the matter of drafting
10 the Constitution itself. The reason we were not is
11 a matter that all of us have been suspecting from the
12 reading we have been doing but is definitely confirmed
13 by the conversations with numerous people in Boston.
14 That is that none of the other states in preparation
15 for a Convention has undertaken to prepare the kind
16 of report or work book that we have been talking about.

17 There is tremendous interest in it and
18 among some at least an expressed feeling of skepticism
19 that it is going to be possible for us to get such a
20 report in less than a period of three or four years.
21 Real skepticism that we could possibly have a report of

1 the nature that we contemplate by January of this
2 year.

3 The feeling of relief I had was that at
4 least we did not find that any other states had tried
5 what we have tried and failed. The failures of the
6 other states, for the most part they were all failures,
7 resulted from procedures which are quite different from
8 those we have been following. In the first place, as
9 indicated in response to Mr. Miller's question, none of
10 the other states had preliminarily a referendum to
11 take the sense of the people. The Kentucky experiment
12 if it proved anything, I certainly wouldn't express
13 any views about it one way or the other because I don't
14 know a thing about Kentucky politics, the general
15 feeling expressed by several people there who had
16 participated actively in the drafting of the Constitution
17 was that the overwhelming rejection was an emphatic
18 rejection by the people of that method of procedure.
19 Their procedure there was in effect to have a Commission
20 such as this, appointed Commission, prepare a draft of
21 a Constitution without an elaborate explanatory report,

1 submit it to the Legislature, not to a Convention,
2 have it approved by the Legislature, then submitted
3 to the people. There was apparently also a campaign
4 to obtain a favorable vote but not a campaign to
5 educate the public on the constitutional issues
6 involved.

7 Those who were present from Kentucky had
8 not yet recovered from the effect of the slapping by
9 the electorate and they were completely pessimistic,
10 particularly as to the prospect of any state accomplish-
11 ing any constitutional revision in any form at all in
12 the foreseeable future.

13 Rhode Island, quite frankly, I think, the
14 feeling of people from Rhode Island, there was that
15 they are going through an exercise in futility. That
16 at some point they will come up with a report that no
17 one, not even the Constitutional Convention of Rhode
18 Island, anticipates will even be given very serious
19 consideration. They anticipate that at some point they
20 will have a different kind of procedure worked out to
21 accomplish constitutional revision that is vastly

1 different from what they are doing now. As you know,
2 their convention has been meeting about two years now.
3 I think they meet once a month and debate and discuss
4 but really accomplish practically nothing.

5 The Chairman of the Convention was present
6 and participated in the discussion in Boston. He
7 certainly was anything but optimistic.

8 New York's experience or lack of experience
9 was also illuminating. They have a preparatory Commis-
10 sion. The Commission has been apparently tied up or
11 tied down with politics and lack of funds for the
12 entire period of its existence. Until very recently it
13 had accomplished nothing at all.

14 It now has been torn asunder by conflicts
15 between the staff and the Convention, with resignations
16 of the Executive Director, and the whole setup of the
17 Convention as described at the meeting, of the preparatory
18 Commission, is entirely different from anything we have
19 been attempting to do. The Commission is politically
20 oriented with very definite attempts to balance the
21 representation in the Commission among the various

1 parties, to make it partisan but representative of all
2 parties. Chairmanships of subcommittees are allotted
3 on this basis and apparently each committee then goes
4 about the task of creating its own staff and undertaking
5 preparation of its own part of the document and report
6 without a great deal of relation to the rest of the
7 Commission. One of their procedures, commented on as
8 being quite different from what we talked about, is the
9 fact that many of their Commission meetings, one had
10 the impression this was most of them, were not public
11 meetings, that there was no effort to involve the
12 public in the questions being considered by the
13 Committees and by the Commission itself.

14 I had the impression that the Commission
15 as a Commission is simply not functioning in a review
16 of the reports of its subcommittees in the manner in
17 which this Commission is functioning but rather is
18 merely exercising a sort of loose general supervision
19 over the work of the various Committees.

20 The whole subject of constitutional revision
21 was deemed important enough by the persons working out

1 the program for the Municipal League that they had one
2 of the morning sessions and one of the afternoon sessions,
3 work shop sessions, devoted entirely to this subject
4 so that there was a full day of discussion of the whole
5 matter of constitutional revision and procedures for
6 it.

7 Some feeling that what we are attempting,
8 even in drafting a Constitution, is a complete exercise
9 in futility, that it accomplishes nothing, and could
10 even do harm, but I must say that the predominant,
11 very greatly predominant, view was that the possibility
12 of a convention being able to accomplish anything without
13 very extensive preparatory work by some group was very
14 evident, I would say certainly nine out of ten or
15 perhaps even a higher proportion of those participating
16 in the discussion indicated very strong views.

17 I think the same could be said of the notion
18 that the Convention should be an elected body. A
19 great diversity of opinion as to how it should be
20 elected as to whether it should be partisan or nonpartisan
21 as to whether there should be definite attempts made
to allocate membership in the Convention among the

1 parties and geographic areas, et cetera. No unanimity
2 of opinion that I could detect as to which might be
3 preferable.

4 One other big thing that I noticed in
5 discussions not only of constitutional revision generally
6 but of the problem with which we are struggling very
7 hard, namely, the question of political subdivisions,
8 was that the situations varied so greatly from state
9 to state that it is exceedingly dangerous to look to
10 what another state has done in this area and indeed
11 in any area of constitutional revision without knowing
12 fairly accurately what the political organization of
13 the state is not only as to political parties but as
14 to organization of the geographic and political
15 subdivisions of the state.

16 In Maryland, as all of us know, the county
17 is the predominant political organization but in many
18 states the county has almost ceased to exist as a
19 governing unit. Unless this fact is recognized when you
20 look at the procedures being considered by a particular
21 state, it is very difficult to try to use what they do

1 as a model for us.

2 For instance, in some states, as New Jersey
3 and Pennsylvania, the entire state is divided into
4 incorporated municipalities so there is not one square
5 foot of either of those states that is not included
6 in an incorporated municipality. The result is their
7 attitudes toward counties and to municipalities is
8 exactly the converse of ours. They think of the
9 county as merely a group that has some historical and
10 traditional status but really is not being meaningful
11 in the sense of governing. Yet they cannot understand
12 at all how we can possibly govern in Maryland without
13 municipalities to accomplish the job on the local
14 level.

15 A number of other situations exist in this
16 area which left me with a feeling that we cannot in
17 solving the problems of metropolitan areas even though
18 they were discussed at tremendous length in the Boston
19 conference, we cannot simply look to what some other
20 state has done and adapt it to our purposes. We have
21 got to look at the problem in our own way. I think this

1 is highlighted for us by the fact that the problems
2 which exist in Maryland with respect to the Washington
3 area, for instance, are so vastly different from
4 those which exist for us with respect to the Baltimore
5 area. The Washington area, for instance, is complicated
6 by the necessity of considering interstate problems,
7 relationship with the District and with Virginia, which
8 doesn't exist at all in connection with the Baltimore
9 area.

10 I mention those things particularly because
11 I think the Seventh Report of the Committee on Political
12 Subdivisions, which we will consider later this morning,
13 has almost, if not entirely, settled for our purposes
14 many of the issues. Nevertheless there are a few
15 important policy matters which must be decided by us
16 today. I just don't think you get a great deal of
17 comfort from looking at what some other state or
18 metropolitan area has done to solve the problem. So
19 much for the meeting of the National Municipal League.

20 It gives me great pleasure to announce
21 formally what I am sure every member of the Commission

1 and staff here this morning already knows, that is
2 that our member, Walter Haile, is, I think it is, the
3 fourth member of this Commission to be elevated to the
4 Judiciary. All of us extend to him our heartiest
5 congratulations but I must say also that I telephoned
6 him immediately to ask him not to be in too great a
7 rush to assume his duties because he still has some
8 work to complete with us. Do you know yet when you
9 will go on the Bench?

10 MR. HAILE: Thank you. December 16 is
11 the date.

12 THE CHAIRMAN: That makes us take a deep
13 breath. A lot will happen between now and middle of
14 December.

15 Another matter that I want to bring to your
16 attention has to do with the matter of political
17 subdivisions that we have been discussing so much and
18 will discuss later this morning.

19 In an effort to encourage public discussion
20 of this issue and bring an awareness of it to the people,
21 to the people who will be voting on election of delegates,

1 to those who will be running for delegates, and to the
2 Legislature, the Commission requested Morgan College,
3 Johns Hopkins University, University of Maryland, and
4 Goucher College to sponsor a seminar or work shop to
5 discuss these problems. All four institutions have
6 agreed to do so. Within the next few days they
7 will issue invitations to a group to attend a special
8 session which we thought would be held at Goucher
9 College on December 9 and 10. We have a problem, as
10 many of you I am sure will recognize, in that there
11 is a Colt game on the afternoon of December 10. We
12 seem to be beset with problems of conflicts with foot-
13 ball games. I think we will probably have to go ahead
14 notwithstanding that possible conflict simply because
15 of the difficulty in getting the various people we want
16 to participate in agreement as to another date.

17 MR. CASE: That's not just another Colt
18 game. That's the Green Bay game.

19 THE CHAIRMAN: The general idea of the
20 work shop is that we will in a two-day session, which
21 may perhaps be shortened to a day and a half, have six

1 or eight people from out of the state, recognized as
2 outstanding authorities in this general area, attend
3 the work shop and invite perhaps 75 people from Maryland
4 who either have ideas or are in position to influence
5 ideas with respect to metropolitan government in
6 Maryland. We do not want to have the outside people
7 deliver a series of lectures but instead will try to
8 promote a discussion of the problem and possible
9 solutions by the local people with the suggested solu-
10 tions being either praised or criticized by the outside
11 so-called experts. The plans that are shaping up
12 look like the conference could be a very helpful one.
13 Members of the Commission will, of course, be invited
14 and will be sent notices well in advance of the date
15 giving you all details.

16 There will be a reception and buffet supper
17 on Friday evening at the campus home of Dr. Kraushaar,
18 President of Goucher, in an effort to promote in a
19 very informal way the kind of discussion which we
20 hope will proceed during the sessions formally.

21 We have also been considering in connection

1 with the election of delegates to the Constitutional
2 Convention and assembling of the Convention next year
3 the problem of advising and informing the delegates
4 on the constitutional issues involved in the Convention
5 and on the mass of material that is available for
6 study, including our report and work book. It seemed
7 to us it would be unfortunate if in accordance with
8 what we have been talking about a Convention assembled
9 in July for a day or so to elect a president so he could
10 start work on committees and each delegate was then
11 handed a bulky report of this Commission and an
12 even bulkier work book and told to go home and
13 read it in preparation for a September meeting of the
14 Convention, without more.

15 We therefore, borrowing a page from the
16 note book of the Legislature, thought it would be
17 helpful to have a session perhaps of several days that
18 would be a work shop session for delegates, at which
19 members of the Commission and the staff could present
20 to the newly elected delegates the problems of constitu-
21 tional revision, could discuss the reports of the

1 Commission, the supplementary material we would have
2 available, and in general give the new delegates a
3 better insight into the problems facing them, so that
4 they would then be able to tackle the task of studying
5 the reports and various other matters and extensive
6 bibliography with a great deal more gusto and certainly
7 with a better chance of getting something out of it.

8 As you know, the Legislature recently
9 installed a sort of school for new members of the
10 Legislature. The Judiciary has adopted a similar
11 system. We find now both on a national level and on
12 a state level schools in effect for new Judges to
13 acquaint them with the problems of judging.

14 What we are suggesting in effect is some-
15 what the same sort of procedure.

16 We have tried out the idea on several
17 people and the response has been one to encourage
18 rather than discourage. The Governor thought, for
19 instance, that the Legislature would be very interested
20 in providing for this type of thing. This, of course,
21 is one of the problems that we will have to work out

1 with the Committee on Convention Procedures.

2 All of you note the absence of Governor
3 Lane from the meeting this morning. I think this is
4 the first meeting of this Commission at which he has
5 not been present or the second meeting. He was abroad
6 at one meeting. His absence this morning is due to
7 the sudden death of his only sister last week on
8 Wednesday or Thursday. He will be with us at the
9 next meeting.

10 I have been asked to advise the Commission
11 informally of what you will receive formal notice of
12 a little later. That is the Governor's desire to have
13 a reception for members of the Commission and their
14 wives and staff and their wives at the Government House
15 in Annapolis on the evening of December 13. The
16 Governor's secretary asked me if I could say whether
17 that date would be entirely agreeable. I said that
18 so far as I could determine, it would be. This is
19 really the only social function of the Commission and
20 I am sure every member will want to be present.

21 Is there any reason of which anyone is

1 aware why December 13, which is a Tuesday, would be
2 an impossible date?

3 MR. CASE: You mean individually or
4 collectively?

5 THE CHAIRMAN: I am asking both. Individually,
6 I would hope every member of the Commission could be
7 there.

8 MR. CASE: I can't be there. I have to be
9 in New York that day.

10 THE CHAIRMAN: Any others? The next thing
11 that I want to mention is that I hope to be able to
12 conclude the work that we have scheduled for this
13 meeting --

14 DR. JENKINS: Pardon me. Is this a firm
15 date or tentative date?

16 THE CHAIRMAN: This will be a firm date in
17 the absence of any considerable number of people not
18 being able to be there.

19 DR. JENKINS: Do you have the time?

20 THE CHAIRMAN: I don't know. I suppose
21 6 o'clock or thereabouts. I think it would be desirable

1 for all of you to note the date in your calendars.

2 I think we will be able to conclude the
3 work scheduled for today's session by late afternoon so
4 it will not be necessary to have an evening meeting.
5 I think, however, it will be necessary for us to have
6 another meeting, which I would hope to be the final
7 formal meeting. I would hope we could do it next
8 Monday.

9 MR. CASE: Next Monday?

10 THE CHAIRMAN: Yes.

11 MR. CASE: Week from today?

12 THE CHAIRMAN: Yes. I would like at that
13 time to arrange to have photographs taken of the
14 entire Commission and the staff, a formal photograph.
15 I have made the arrangements with the photographers
16 attached to the State Police to take the photographs
17 at whatever time we are ready. What is your pleasure
18 as to a meeting? I would contemplate that this could
19 be a meeting in the afternoon that might perhaps run
20 into the evening or perhaps only the photograph in the
21 evening rather than morning or afternoon. But we could

1 do whichever would suit most members best. This is,
2 of course, very short notice, I had hoped we wouldn't
3 have to have another meeting, but we are under such
4 pressure to conclude our report and wrap up all
5 details that I don't think we can put it beyond that
6 date.

7 MR. MILLER: Where would it be?

8 THE CHAIRMAN: Probably right here in this
9 building. Facilities are available here to have a
10 room large enough to take the picture. We will probably
11 have to have two separate pictures, one of the
12 Commission, a separate one for the staff. I am afraid
13 one picture of the combined would have such a large
14 group the faces would be too small. This is a picture
15 which I had hoped to be able to have available so that
16 each member could have one but also to include it
17 in our report. Is there anyone who could not be present
18 at a meeting on next Monday?

19 MR. BARD: Could it be afternoon and
20 evening? I am asking.

21 MR. HOFF: I have to drive back from New

1 York Monday morning. I could be here in the afternoon.

2 MRS. FREEDLANDER: I can't make it.

3 THE CHAIRMAN: Out completely for you?

4 MRS. FREEDLANDER: Yes.

5 MR. CASE: I think, I don't want to get
6 into this now, but it seems to me a big area and the
7 frame of reference this Commission has to adopt is
8 unresolved. I have been doing what I can to get it
9 resolved with Judge Adkins, as you well know. But he
10 is not here today, not here yet. I have specific
11 reference to the thing which we got, our Committee
12 got into somewhat obliquely in the revenue picture,
13 that is, the place of the comptroller in the State
14 Government.

15 I rather take it that the Commission at
16 an early time suggested that or recommended in effect
17 that the office be removed from the Constitution as
18 a constitutional office. I have some very grave second
19 doubts about that and second thoughts. My Committee,
20 I think, will probably not buy this recommendation for
21 very cogent reasons which I am not going into now.

1 Maybe you can explain this better, Mr.
2 Chairman, because this is a question that I think is
3 very important and one which the Adkins Committee and
4 mine ought to meet and try to get resolved before
5 bringing back a report to the Commission. Certainly the
6 way it stands now it is very inconclusive and very
7 unsatisfactory.

8 THE CHAIRMAN: This is one of the major
9 matters that I want to resolve at this next meeting.
10 I was hoping there could be a joint meeting of the two
11 Committees this week and present it next Monday. If
12 that is too short a time, we will have to push the next
13 meeting up because I do want to have that matter
14 presented by the two Committees and resolved finally
15 by the Commission at the next meeting whenever it is.
16 Have you talked to Judge Adkins at all as to a possible
17 date?

18 MR. CASE: No, of course he wasn't at the
19 meeting the other day, as you know. I haven't been
20 able to get him in Baltimore. I guess if I went to
21 Salisbury, I could get him.

1 THE CHAIRMAN: What would be the position
2 of the members as to having the meeting, say, on
3 Wednesday of next week instead of Monday? That is
4 ten days.

5 DR. BARD: I couldn't make it. Wednesday
6 is a bad day. Monday is good.

7 MR. MILLER: I could not be here.

8 MR. MINDEL: I think the Bar Association is
9 having a ceremony for Judge Rhynhart who is retiring
10 on Wednesday, the 30th. I don't know how many members
11 here want to attend but I have to be present there,
12 30th of November, 3 o'clock.

13 THE CHAIRMAN: How about Thursday, the
14 first?

15 MR. MINDEL: All right.

16 MR. CASE: How about the following Monday,
17 December 5?

18 THE CHAIRMAN: If we can't do any better,
19 we have to. I hate to put it off that long.

20 (Discussion off the record.)

21 THE CHAIRMAN: Is there any objection to

1 Saturday, December 3?

2 MR. GENTRY: Would that be afternoon?

3 THE CHAIRMAN: I would think it would be
4 better to meet perhaps mid morning, say 10:30 or there-
5 abouts, run through the afternoon.

6 (Discussion off the record.)

7 THE CHAIRMAN: Is there anyone who can't
8 be here Saturday, December 3? I think we will just have
9 to schedule it then. Will you all make a note on your
10 calendars, please. We will say about 10:30 in the
11 morning to continue through the afternoon and we can't
12 have any other meetings after that. I would like to
13 ask that everyone be prepared to stay into Saturday
14 evening if we have to in order to finish.

15 (Discussion off the record.)

16 THE CHAIRMAN: We will say Saturday,
17 December 3, 10:30, through the afternoon and perhaps
18 then into the evening if it becomes necessary. We
19 will try to avoid that.

20 We also have to have at that meeting the
21 final report of the Committee on Judiciary which is also

1 a very, very important report and will require some
2 discussion. Any other Committee reports which have
3 details to pick up will have to be decided at that time.

4 MR. MARTINEAU: One of the items we are
5 starting to consider in our Committee is the schedule.
6 I haven't heard any discussion from any of the other
7 Committees as to their proposals to be included in
8 the schedule of when we are going to wind up considering
9 this. I would like information on this.

10 THE CHAIRMAN: I would like to try to
11 discuss this somewhat before the day's session is
12 finished because this too will be a matter that we
13 will have to consider at the next and, I hope, final
14 meeting. That's a matter of the schedule to be attached
15 to the Constitution. One of the important things we
16 have to consider in connection with that schedule is
17 the nature of it. We have been talking rather loosely
18 about a schedule which is subject to a change by the
19 Legislature. This will not be possible as to some
20 things that we have been thinking would go into the
21 schedule. It may be that the schedule would be of two

1 parts, one constitutional matters not subject to change
2 by the Legislature but which are nevertheless of a
3 not permanent character, and matters which are not
4 only not permanent but should be subject to future
5 modification by the Legislature.

6 Dale, one of the things we talked about
7 before you came in is the necessity of having another
8 meeting of your Committee and the Committee on State
9 Finance just as soon as possible because we must
10 have a final report by that Committee by the next
11 meeting which we have just talked about having on
12 Saturday, December 3, which would be the last.

13 It is also necessary to arrange to take
14 some additional testimony by that Committee. Would you
15 talk to Mr. Case without fail sometime today and see
16 if we can get a date set up for the Committee meeting?

17 JUDGE ADKINS: Yes, sir.

18 THE CHAIRMAN: No I might suggest to both
19 of you that in view of the lateness of the date, I
20 have no doubt it is going to be impossible to get a
21 date for the meeting at which every member of both

1 Committees can be present. I suggest to you that the
2 importance of having a meeting is such that you
3 schedule it even though you can't have full attendance.

4 MR. BOND: I just polled all members of
5 each subcommittee and we can meet after this adjourns
6 today.

7 THE CHAIRMAN: You still have to take testi-
8 mony of the State Treasurer.

9 All right. If there are no other matters
10 of general announcement, we are ready to move ahead
11 on consideration of the Seventh Report of the Committee
12 on Political Subdivisions and Local Legislation. You
13 should have before you now the Seventh Report of that
14 Committee together with the memorandum headed staff
15 memorandum dated November 21, 1966.

16 There is one matter I forgot to mention.
17 I received a letter from Mr. Clarence Miles on November
18 10 which was the first date, as I understand it, that
19 the doctors had permitted him to resume any normal
20 activities. He has gone away to Florida to recuperate
21 and expects to be back the first of December and has

1 said he will participate in all further meetings of
2 the Commission. Mr. Clagett.

3 MR. CLAGETT: Mr. Chairman, I would like
4 at the outset to adopt a form of approach and since
5 we haven't had a chance to coordinate in that regard,
6 prior to now, do you want to follow the procedure that
7 we have previously followed, namely reading the entire
8 article, then going back section by section? Or would
9 you prefer that I merely point up areas of change and
10 go on the assumption that the report has been read
11 and the comment digested by the members of the Commission.

12 THE CHAIRMAN: I think in view of the
13 re-arrangement of the article, it would be better to
14 take a few minutes and read through the entire article,
15 then come back and take it up section by section.

16 MR. CLAGETT: Very well, sir. Mr. Chairman,
17 I am reading on Page 1 of the Seventh Report, Article
18 XI, Section 11.01, Units of Local Government. Subsection
19 (a). For the purposes of this Constitution, Baltimore
20 City shall be considered a county; "municipal corporation"
21 shall mean an incorporated city, town or village, but

1 shall not include Baltimore City or any county.

2 (b) The General Assembly may provide by
3 law for the creation, incorporation, changing, merging,
4 dissolution and the alteration of boundaries of counties
5 and multi-county civil divisions, including regional
6 representative governments and intergovernmental
7 authorities.

8 (c) The General Assembly may create, merge,
9 dissolve and alter the boundaries of any county only by
10 a three-fifths vote of the membership of each house.

11 Section 11.02 Regional Governments and
12 Other Civil Divisions.

13 (a) Multi-county regional representative
14 governments and intergovernmental authorities may be
15 established by the General Assembly, by concurrent
16 action of the county legislative bodies, or by affirma-
17 tive action of a majority of the registered voters of
18 a proposed region voting upon a petition submitted by
19 the residents of the proposed region bearing the names
20 of registered voters equal to five per cent of those
21 voting for governor in the most recent gubernatorial

1 election.

2 (b) Powers may be vested in a regional
3 government either by the governing bodies of all counties
4 within or partly within a region relinquishing powers
5 to it, by the General Assembly enacting a law withdrawing
6 specified powers from all counties within or partly
7 within a region, or by the General Assembly delegating
8 powers of the state to a region. The power to impose
9 and collect revenues, to borrow money and to collect
10 taxes may be vested in the regional governments by law,
11 or by the consenting counties.

12 (c) The General Assembly or other represen-
13 tative governments may grant to intergovernmental
14 authorities the power to impose and collect revenues,
15 to borrow money and to collect taxes.

16 Section 11.03. Powers of Counties.

17 (a) A county may exercise any power, other
18 than judicial power, or perform any function which is
19 not denied to it by this Constitution, by its charter
20 or by law which in its terms and in its effects is
21 applicable to all counties or to all counties of its

1 class, and which has not been transferred to another
2 civil division.

3 (b) Classes of counties, based upon popula-
4 tion as determined by the most recent United States
5 Census or upon other criteria, may be provided by law
6 with not more than five classes and not less than
7 three counties in any one class. No more than one
8 classification shall be in effect at any one time but
9 the classification may be changed at any time.

10 (c) The General Assembly may enact only
11 public general laws which shall, in their terms and in
12 their effects, apply without exception to all counties
13 or to all counties in a class. No county shall be
14 exempt from any public general law applicable to counties
15 in its class.

16 Section 11.04. Structure of County
17 Governments.

18 (a) The General Assembly shall provide by
19 law for methods and procedures by which the governing
20 body or the voters of a non-charter county by petition
21 may enact an instrument of government subject to

1 ratification by a majority vote of the voters of the
2 county voting thereon. The General Assembly shall
3 provide by law for an instrument of government for all
4 non-charter counties existing on January 1 of the
5 fourth year following the effective date of this
6 Constitution.

7 (b) Until such time as the county adopts
8 a plan or the General Assembly plan becomes effective,
9 the existing county governments shall have those powers
10 provided in the Constitution.

11 (c) Any instrument of government of a
12 county shall provide for its amendment by a majority
13 vote of the voters of the county voting on any amendment
14 submitted by the governing body or by the petition of
15 the voters in accordance with its provisions.

16 Section 11.05. Municipal Corporations.

17 A county may provide by public local law
18 for the creation, incorporation, changing, merging,
19 dissolution and altering of boundaries of its municipal
20 corporations and may delegate powers to them. No
21 existing municipal corporation may be dissolved or be

1 subject to the withdrawal of any existing powers without
2 either its consent or the consent of the General Assembly
3 by law.

4 Section 11.06. Intrastate Intergovernmental
5 Agreement.

6 Any county, other civil division or
7 municipal corporation may, except to the extent prohibited
8 by law, agree with the State or with any other county,
9 civil division or municipal corporation for the joint
10 administration of any of their functions and powers
11 and the sharing of costs thereof.

12 Section _____.

13 The General Assembly shall provide for
14 the general funds of the State necessary costs, salaries
15 and expenses incidental to the establishment and
16 administration of all agencies, offices or positions
17 created by it, except local boards of education, or
18 election required by public general law.

19 THE CHAIRMAN: Let's proceed through it
20 section by section, consideration of the article.

21 MR. CLAGETT: Without repeating the preface

1 or even synopsisizing the preface, which you will find
2 beginning on Page 4, I think we can best proceed by
3 directing our attention to Page 7 of the report.

4 There you will find we take up Section 11.01 under
5 caption Units of Local Government.

6 Subsection (a) includes the recommendations
7 of the Commission that definition of municipal corpor-
8 ation be given, namely, to mean an incorporated city,
9 town, or village. Of course, this excludes, as the
10 Sixth Report Excluded, Baltimore City or any county.
11 It provides further, of course, as the Sixth Report
12 and the Commission approved that Baltimore City shall
13 be considered a county. Therefore, we will have 24
14 basic units constituting the counties.

15 THE CHAIRMAN: Any question about Subsection (a)?
16 Comment? Subsection (b).

17 MR. CLAGETT: Subsection (b) has one impor-
18 tant change in that where the General Assembly is
19 given the power to create, et cetera, and alter the
20 boundaries of counties and civil divisions, we have
21 restricted that power to multi-county civil divisions.

1 It being the thinking of the Committee
2 that with respect to the use of the phrase civil
3 division some definition should be given to it in the
4 Constitution. We have, therefore, inserted the
5 words multi-county to place the Legislature in the
6 field of dealing with civil divisions outside of the
7 state and civil divisions which extend beyond the
8 county lines.

9 This is in the interest of consistency
10 because with the grant of broad home rule power to the
11 county and the control of the county over the
12 municipal corporations, it is felt that the county
13 government should take care of any authority or
14 control over civil divisions within its boundaries.

15 The General Assembly would take care of
16 those which go beyond county lines.

17 The provision by the General Assembly to
18 create multi-county civil divisions includes the
19 regions and intergovernmental authorities and region
20 has been defined to the extent of providing for
21 representative governments in accordance with the

1 action of the Commission taken at the Brown Estate.

2 THE CHAIRMAN: Any questions? Dr. Bard.

3 DR. BARD: There are two questions. First
4 do we need intergovernmental authorities since the
5 authority in terms of intergovernmental authorities
6 is there without expressing it specifically in the
7 Constitution at this point.

8 Then my second suggestion deals with
9 whether by law might not be expanded to include both
10 methods and procedures.

11 THE CHAIRMAN: Mr. Clagett, do you want
12 to comment on the first question?

13 MR. CLAGETT: It has been the thinking of
14 the Committee, and I think it was the action of the
15 Commission, that notwithstanding the conflict in
16 the two approaches, regional representative government
17 and intergovernmental authorities, we would provide for
18 both in the Constitution and leave to the General
19 Assembly to the degree not otherwise provided in the
20 Constitution the advisability of utilizing one or the
21 other of the two alternative approaches.

1 THE CHAIRMAN: As I understood Dr. Bard's
2 question --

3 MR. CLAGETT: I believe Dr. Bard, notwith-
4 standing the fact it could be included without being
5 mentioned, I think by mentioning we carry out the intent
6 of members of the Committee and Commission pointing it
7 up specifically.

8 DR. BARD: The only thing that troubles
9 me about it is what we will seek to do after a while
10 is seek to eliminate proliferation of intergovernmental
11 authorities as regional governments come into being.
12 If the Constitution encourages specifically at this
13 point the development of intergovernmental authorities,
14 we may find ourselves in the binding position.

15 THE CHAIRMAN: Mr. Clagett, further comment?

16 MR. CLAGETT: I think we have argued this
17 before. I think that to comment beyond noting the
18 repetition of a comment previously made we would be
19 getting back into an area that I think we have already
20 come through.

21 THE CHAIRMAN: As I remember it, this was

1 discussed at great length at the last meeting. The
2 feeling of the Committee at least was that while it
3 was opposed to proliferation of intergovernmental
4 authorities it did not want to take any firm position
5 to prevent it or even discourage it in the constitution,
6 is that correct?

7 MR. CLAGETT: That is correct, and,
8 therefore, since the comment was rather extensive, I
9 don't think it necessary to repeat that now.

10 THE CHAIRMAN: Anything further?

11 MRS. FREEDLANDER: I think we took care
12 of that to a great extent by providing multi-county
13 civil divisions, any new area that would be created
14 would of necessity have to be a multi-county one
15 against the danger of proliferation.

16 MR. CLAGETT: I think that brings into
17 focus to some extent the attempt on the part of the
18 Committee to cure a fear that was raised by Mr. Sykes
19 that through the use of the intergovernmental authority
20 device the General Assembly could be back in the
21 field of local legislation.

1 In order to minimize that, the multi-county
2 civil division was one provided for in that it would
3 take the General Assembly out of the field of the
4 boundaries of the county and place it only in the
5 multi-county and dealing with problems that extend
6 beyond county lines.

7 THE CHAIRMAN: I take it that implicit in
8 that is the notion the Legislature could not create
9 either a regional government or intergovernmental
10 authority except on a multi-county basis but that the
11 county, any county, could create purely local inter-
12 governmental authorities within its boundary?

13 MRS. FREEDLANDER: Yes.

14 MR. CLAGETT: That is correct. Specifically
15 the Committee considered the possibility that without
16 such a definition, one county could become a region.
17 It was to avoid that very possibility that we went
18 to the definition of civil division as being multi-
19 county when being dealt with by the General Assembly.

20 THE CHAIRMAN: But it is also intended,
21 is it, that a county could provide an authority to

1 operate between two of its own municipalities or
2 between a municipality and county?

3 MR. CLAGETT: That is correct. I think
4 this is the appropriate place to mention that, direct-
5 ing attention to Section 11.06, where counties by
6 compact or agreement may create authorities in order
7 that -- singularly I might add within the county,
8 municipal corporations could enter into compacts or
9 agreements, in order to give the counties a degree of
10 control over any action by civil divisions within its
11 boundaries, we made the broad prohibition one by law
12 rather than public general law. By law it is meant
13 that not only the Legislature but also the county
14 could restrict or control the compacts entered into
15 by civil divisions.

16 THE CHAIRMAN: Could you come back to the
17 second question that Dr. Bard asked which, as I
18 understood it, was whether you intended in the first
19 phrase of Subsection (b) to authorize the General
20 Assembly to provide by law not only for the creation
21 or change or so forth of multi-county civil divisions

1 but also to provide by law procedures for the creation
2 of such.

3 MR. CLAGETT: Yes, that is contemplated.
4 We do not mean to restrict, to mere creation, but
5 to include the provision for structure although else-
6 where we go into giving other approaches insofar as
7 the determination of structure is concerned. But it
8 is not meant to be restrictive upon the General
9 Assembly. I think the language would make that clear.
10 I hope there is no confusion.

11 THE CHAIRMAN: That is what is intended
12 by the language used which is what Dr. Bard's question
13 was, as I understand it.

14 MR. CLAGETT: This language includes both
15 the act of creation and act of providing, giving birth
16 and nurturing.

17 DR. BURDETTE: I think I kept up with this.
18 I have a couple questions. I gathered your question,
19 Mr. Chairman, which is not answered, regarding inter-
20 governmental authority being multi-county comes from
21 the language multi-county civil divisions include. So

1 that would mean including intergovernmental authorities.

2 My first question is this. Does this multi-
3 county mean that the representative of regional government
4 and intergovernmental authorities must be in the
5 totality of multi-counties or could it be, let us say,
6 half of Baltimore County and all of Howard?

7 THE CHAIRMAN: I gather from the Committee's
8 report that it would be the latter. In other words,
9 that multi-county means it must include some part at
10 least of more than one county but it does not necessarily
11 have to include all of any county that is included
12 in part, is that correct?

13 MR. CLAGETT: That is correct.

14 DR. BURDETTE: That would establish it
15 for the record here but would it be wise to be more
16 precise in the language?

17 THE CHAIRMAN: It is definitely stated in
18 the report. I don't recall whether there is
19 provision in the language of any of the section or not.
20 I don't believe there is.

21 MR. CLAGETT: No, there isn't.

1 MR. CASE: Mr. Chairman.

2 THE CHAIRMAN: Mr. Case.

3 MR. CASE: Mr. Chairman, the thing that
4 worries me about this provision is that I think it
5 fails to reach what may eventually turn out to be
6 a very important division of local government. Perhaps
7 I am not reading this properly and my fears are unjusti-
8 fied. But as I read it, you have got three animals
9 here, the county, the municipal corporation, which will
10 be an incorporated town or city, and the so-called
11 multi-county civil divisions.

12 I suggest that a more likely type of
13 local government will be a part of an existing county
14 which may be incorporated or designated as a taxing
15 district for a specific purpose. This is certainly the
16 case today.

17 For example, in Baltimore County, we have
18 what is known as the metropolitan division or the
19 metropolitan area, which involves the delivery of water
20 and sewerage utilities to the people in that area but
21 it is a metes and bounds area specified in the county

1 as such. Within that area the county can impose
2 ad valorem taxes for the purpose of meeting the obliga-
3 tions that are incurred to deliver those services while
4 outside the area it cannot.

5 Taking off from that which was one of the
6 first incorporated entities within a county, we have
7 today in, I don't want to give the number, I would say
8 better than half of the counties, what we call sanitary
9 districts created under Article 43 of the Code, can
10 be established by County Commissioners upon petition of
11 the people involved in a given area. Those sanitary
12 districts are set up again to deliver water and sewer
13 services to the people but they are all within one
14 county as of now although they can be in one or more
15 counties.

16 What I am suggesting is that the definition
17 of civil division, if it means to exclude this kind of
18 area located all in one county, is too limited.

19 THE CHAIRMAN: As I understand the report
20 of the Committee, what they are saying in 11.01 (b)
21 is that the General Assembly may not create such divisions

1 as you talk about but that the counties may.

2 MR. CASE: Does it say that?

3 THE CHAIRMAN: Section (b) deals only with
4 what the General Assembly may provide for. A later
5 section deals with the powers of the counties.

6 MR. HAILE: The counties have plenary
7 powers under a later section.

8 DR. BARD: 11.06.

9 THE CHAIRMAN: The theory of the section,
10 as I understand it, is that unless the Legislature by
11 general law prohibits all counties from exercising such
12 power, they would have it.

13 MR. CLAGETT: I believe that would be
14 correct. I don't see anything here that would prohibit
15 necessarily the --

16 MR. CASE: If somebody does not deal with
17 this from day to day, you better put in the Constitution,
18 at least a definitional section, saying this can be
19 done.

20 MR. CLAGETT: 11.03 Subsection (a), that
21 would be more appropriate for further consideration along

1 this line.

2 THE CHAIRMAN: Where you define powers of
3 the county?

4 MR. CLAGETT: Yes.

5 MR. CASE: 11.06.

6 MR. CLAGETT: 11.03, Page 12.

7 MRS. FREEDLANDER: (a).

8 MR. CASE: I have some comment about that
9 too.

10 MR. CLAGETT: I think that would include
11 just what you are talking about.

12 MR. CASE: Bear in mind, I say this as an
13 aside, when dealing with these written documents, oftentimes
14 it is very important not to be too academic about
15 it and to specify definitional concepts because if you
16 don't, you get into a lot of trouble when you try to
17 convince other people the Constitution permits so and
18 so. After all, a lot of people deal with these things
19 for practical reasons who are not constitutional
20 authorities.

21 MR. CLAGETT: Very true.

1 THE CHAIRMAN: Mr. Gentry.

2 MR. GENTRY: I want to question whether
3 the word representative was descriptive enough to direct
4 it to elected members of such a government. Is that
5 what you are driving at?

6 MR. CLAGETT: This was inserted here and
7 included in this rewriting at the direction of the
8 Commission and, I think, the discussion at that time
9 was that it would give a definition and direction and
10 would include elective, encompass or mean elected
11 representatives in order to get away from the idea of
12 appointive authority and the destruction of representa-
13 tive government or diminution of it, whatever the proper
14 word.

15 THE CHAIRMAN: Dr. Burdette.

16 DR. BURDETTE: My question is directly
17 related to it. If I were reading this entirely cold
18 I would be in trouble as to whether the word regional
19 representative is undoubtedly modifying government could
20 not also be read to modify intergovernmental authority.

21 THE CHAIRMAN: Which to modify, the whole

1 phrase? Or the word --

2 DR. BURDETTE: My question is, it is
3 perfectly clear the words "regional representative"
4 modify the noun "government." Do they also modify the
5 noun "authority"?

6 MR. CLAGETT: No, they do not and would
7 a comma between "governments" and "and" assist?
8 If so, wouldn't it -- it is not intended that the inter-
9 governmental authorities shall be defined as being
10 representative.

11 MR. HOFF: Put governmental authorities
12 first and then representative regional governments.

13 MR. CLAGETT: That sounds like a good
14 suggestion.

15 MR. MILLER: Suppose you transposed
16 "including intergovernmental authorities and regional
17 representative government."

18 MR. CLAGETT: That would do it.

19 THE CHAIRMAN: Except it may be putting the
20 emphasis where you don't want it.

21 MR. CLAGETT: I don't think we need worry

1 about that. This will not change that. It would
2 certainly avoid any possible interpretation of inter-
3 governmental authority as being representative.

4 THE CHAIRMAN: Are you suggesting that the
5 phrase "intergovernmental authorities" be moved up to
6 follow the word "including" and then you put "and"
7 after authorities so that the concluding phrase would
8 read including intergovernmental authorities and
9 regional representative governments, period, is that
10 right?

11 MR. CLAGETT: Yes, sir.

12 THE CHAIRMAN: Is there any further question
13 or comment with respect to subsection (b)? If not, we
14 move to Subsection (c).

15 DR. BURDETTE: May I ask one more question?
16 Do lawyers present feel for clarity some such words
17 as elective rather than representative is necessary
18 for court interpretation?

19 THE CHAIRMAN: Does anybody want to comment?

20 MR. GENTRY: I think the word representative
21 is not quite descriptive enough because you can have

1 representative government without necessarily being
2 elected and yet this is intended to mean that the type
3 of government is one the members of which may only be
4 selected by election.

5 THE CHAIRMAN: I think generally in this
6 context the term representative government means
7 elected representative government but I confess to some
8 apprehension that this may not be literally true.

9 MR. CLAGETT: I agree with the apprehension
10 but I also point out this additional thought. That is,
11 that when we go into minute definition, we are also
12 restricting a course of action. Many of us strongly
13 feel that confidence should be placed in the General
14 Assembly and that would include means and tools to work
15 with rather than strict definition which is confining
16 insofar as range or freedom of action or course of
17 action.

18 MR. GENTRY: Then you don't mean this to
19 intend the selection might only be by election?

20 MR. CLAGETT: We mean that but whether we
21 intend to go further and bind a later meeting --

1 MR. GENTRY: I don't think it is fair.

2 MR. CLAGETT: I do not think in terms of
3 representative being other than elective but 50 years
4 from now that might be archaic thinking.

5 THE CHAIRMAN: I think the action of the
6 Commission at the last meeting was that the term
7 representative be used to indicate an elected
8 representative.

9 MR. CLAGETT: That is what we mean by
10 this now.

11 MR. MILLER: My thought would be that
12 representative would be more flexible because it might,
13 if you put elective in there, you might have to have a
14 special election to create a board which might by its
15 nature be composed of the members of the City Council
16 of two, they are elected, but they wouldn't be elected
17 for that specific purpose. I think they would still be
18 representative and it would seem to me to be better to
19 leave it representative.

20 MRS. FREEDLANDER: It is my recollection
21 the stenographic records will show we spent quite a bit

1 of time on this very word last time. In the political
2 science journals the meaning of representative govern-
3 ment is other than what we now think of authorities
4 that are appointed or in which the Council, City Councils
5 or County Councils, appoint representatives, to a body,
6 multi-county body. So that the meaning is that it would
7 be an elective body elected from each of the contributing
8 counties. I think this has a meanin g in political
9 science also. We did talk about it last time at great
10 length.

11 MR. SCANLAN: If we only had a meeting of
12 the real world.

13 MR. CLAGETT: The comment defines the
14 word "representative" as being the opposite of appointed.

15 THE CHAIRMAN: Yes. Dr. Bard.

16 DR. BARD: I think it may have that
17 meaning in political science journals. Certainly in
18 the literature which I have read dealing with the
19 Commission report on intergovernmental relations it has
20 both meanings, especially as applied to intergovernmental
21 authorities. I believe that if we really mean elected,

1 the thing to do is say elected because here is where
2 we don't mean elected in most cases.

3 THE CHAIRMAN: As I understand the report
4 and the action taken a few moments ago, it is intended
5 that the interogvernmental authorities need not
6 necessarily be representative. That is,needs not
7 necessarily have elected representatives but that the
8 regional governments must be representative in that
9 sense.

10 DR. BARD: All right.

11 THE CHAIRMAN: I would suggest that the
12 staff can do a little research and if it would meet
13 with the approval of the Commission, retain the
14 present phrase, regional representative government,
15 unless as a result of the research,the staff thinks
16 there is any substantial doubt,in which event we could
17 report it back to the Commission at the next meeting.

18 MR. CLAGETT: Very well. In subsection
19 (c), you will recall there was extended discussion with
20 respect to referendum and the equality of referendum
21 approach for all segments affected by any merger or

1 dissolution or alteration. It was the decision of the
2 Commission that referenda procedures be eliminated
3 because of their restriction or imbalance, and that
4 the extraordinary vote be the answer. We have, therefore,
5 provided for that, namely, that alteration or dissolu-
6 tion of the boundaries of any county shall be only by
7 a three-fifths vote of the membership of each House.

8 THE CHAIRMAN: Question? Dr. Bard.

9 DR. BARD: I am still concerned about the
10 question of one segment of a county being involved.
11 I would like to go back to the illustration that
12 was used at our last meeting. For example, suppose a
13 segment of Baltimore City, let's say Northeast or
14 Northwest Baltimore City, were to be splintered off and
15 joined to Baltimore County. The damage would take
16 place not only in the area concerned, let us say as
17 far as debate is applied, but to the city as a whole.
18 It would be my feeling we should add a sentence that
19 would run somewhat like this:

20 Any change of boundaries which results in
21 taking a part of a county and transferring it to another

1 existing or newly created county shall require a
2 majority vote of the qualified voters in the affected
3 counties.

4 THE CHAIRMAN: Dr. Bard, this matter was
5 discussed at length and acted upon at the last meeting,
6 the whole question of whether any kind of change in
7 boundaries or moving of parts of the city or county
8 to another. The suggestion that you mention was very
9 closely akin to the one that Dr. Jenkins discussed at
10 some length. Unless you would want to move for recon-
11 sideration of that question, I think that we shouldn't
12 debate it further this morning.

13 DR. BARD: Might one move for it without
14 any debate?

15 THE CHAIRMAN: Yes.

16 DR. BARD: I would so move.

17 MR. CASE: Second.

18 THE CHAIRMAN: The question arises then
19 without debate on the reconsideration of the principle
20 involved in subsection (c) as to whether the authority
21 of the General Assembly to create, merge, dissolve, and

1 alter the boundaries of a county should be subject in
2 any way to referendum. Ready for the question?

3 DR. BARD: May I clarify my motion?

4 THE CHAIRMAN: Yes.

5 DR. BARD: I think as far as creating,
6 incorporating, consolidating, merging, and dissolving
7 counties, the first sentence is all right. I would
8 agree that the General Assembly by three-fifths vote
9 of the members of each House would have the privilege
10 of bringing together counties per se. What troubles me
11 is sections of a county.

12 THE CHAIRMAN: I understand that.

13 MR. CLAGETT: I would like to clarify that.
14 That is mandatory referendum because permissive referendum
15 is implicit.

16 THE CHAIRMAN: The question arises on the
17 motion to reconsider the previous action by which the
18 Commission decided against any form of mandatory referendum
19 with respect to the power of the General Assembly to
20 create, merge, dissolve, and alter the boundaries of
21 any county. A vote in favor is a vote to reconsider this

1 question. A vote not is a vote to not reconsider.
2 All those in favor, that is in favor of reconsideration,
3 please signify by show of hands.

4 MR. BROOKS: Eight.

5 THE CHAIRMAN: Contrary.

6 MR. BROOKS: Ten.

7 THE CHAIRMAN: Motion is lost eight to
8 ten. Any further question as to Subsection (c)? I have
9 a question. I note that the subsection (c) pertains
10 only to a county. Do I take from that that it is
11 intended to require an extraordinary vote, a three-
12 fifths vote, of a law to create, merge, dissolve, or alter
13 the boundaries of a county but not to require such
14 extraordinary vote with respect to any multi-county
15 civil divisions?

16 MR. CLAGETT: That is correct. Only a
17 majority there.

18 DR. BURDETTE: I wonder if it would be
19 wise to say the General Assembly may by law create.
20 The reason is that we must consider whether we want a
21 gubernatorial veto to be in the picture.

THE CHAIRMAN: I would reply for the

1 Committee that that is precisely what they say in
2 Subsection (b). I take it that Subsection (c) is
3 intended to refer back. But for sake of clarity, it
4 wouldn't hurt perhaps to put in the words by law.

5 DR. BURDETTE: Unless they mean otherwise.
6 I think it now means otherwise.

7 MR. CLAGETT: I think it reads much better,
8 I would leave that as a matter of Committee on Style
9 because the intent of the Committee has been expressed
10 by the Chairman.

11 THE CHAIRMAN: Let me see if I can state
12 what the intent is. You intend subsection (b) to say
13 that a law creating merging, dissolving, and altering
14 the boundaries of any county must be adopted by three-
15 fifths vote of the members of each House, is that
16 correct?

17 MR. CLAGETT: That is correct.

18 THE CHAIRMAN: We will leave the exact
19 phraseology to the Committee. Did you understand that,
20 Dr. Burdette?

21 DR. BURDETTE: Not really.

1 THE CHAIRMAN: Subsection (c) is intended
2 to mean that a law creating, merging, dissolving, and
3 altering its boundaries of any counties must be passed
4 by a three-fifths vote of the membership of each House.

5 MR. SAYRE: When we use a three-fifths
6 vote, does that assume that you are going to override
7 a veto in advance and, therefore, it is not subject
8 to veto?

9 THE CHAIRMAN: No, if it is by law the
10 law would be subject to veto. That would be an improper
11 assumption. Any further question at all as to Section
12 11.01? Section 11.02, Page 9.

13 MR. CLAGETT: It is in this area that I
14 think we are moving into the area of the staff memorandum
15 which has been made available to us and I confess I
16 have not been able to fully and completely digest all of
17 its impact.

18 But I point up here that with respect to
19 Subsection (a), the multi-county regional representative
20 governments and intergovernmental authorities may be
21 established in three ways, according to this writing.

1 By the General Assembly, by the concurrent action of
2 the county legislative bodies, and the third alternative
3 by affirmative action of a majority of the registered
4 voters by petition.

5 I must further point up here that I find
6 that this provision is one which is breeding conflict.
7 Because of that, we attempted to avoid that conflict by
8 an alternative which is to be found at the tail end of
9 the report and which I did not read in the initial
10 reading, but would now like to have you direct your
11 attention to and you will find it on Page 22.

12 Before reading that, the conflict which
13 I find here in 11.02 is one where in 11.01 (b), found
14 on Page 7, the General Assembly may by law create, and
15 here we say that multi-county regional governments may
16 be established by the General Assembly. I find that
17 merely to be repetitious of what we have already said.
18 I can't find any real distinction between creation and
19 establish.

20 Then we go further and we say by way of
21 a second alternative, by concurrent action of the
county legislative bodies. If you turn to Section 11.06,

1 where we provide for intrastate intergovernmental agree-
2 ments, and counties may compact or agree, the same thing
3 can be accomplished there, so again we are being repetitious
4 of what is elsewhere provided for.

5 Then with respect to the third alternative,
6 namely, the petition approach, I suggest to you that
7 here we see the conflict in that the petition approach
8 could be followed and a regional government established.
9 Then the concurrent action of the Legislative Council
10 abolishes that, then the General Assembly comes along
11 and it abolishes both.

12 So that we have an area where three parties
13 can act within the same area. It seems to me that
14 that is what is meant by conflict or what would be
15 tantamount to conflict.

16 There is also a question here to be resolved
17 by the Commission to clarify action taken by it at the
18 Brown Estate meeting. Because at that meeting it was
19 debated at great length how to approach this matter of
20 regional governments. It was in the notes which I took
21 at that time and in the notes of our reporter, John Howard,

1 that the action of the Commission was that the General
2 Assembly and only the General Assembly had the initial
3 or original power of creation.

4 After it had created regions, then the
5 structure or the implementation of the government for
6 those regions could be the result of the three alterna-
7 tives, namely, by further action of the General Assembly,
8 by the concurrent action of the Legislative Council
9 or by the petition process.

10 As a matter of mechanics, when this
11 analysis and appreciation of the section became
12 apparent, it was too late to do anything about it
13 because when I contacted Mrs. Wiggins in the Executive
14 Director's office, the material had already gone to
15 printing and the only way we could take care of it
16 was by an addendum. So the addendum was added on.

17 Now let me direct your attention to that
18 addendum found on Page 22. There you will find this
19 language as a substitute for subsection (a) found on
20 Page 9:

21 Upon the creation by the General Assembly

1 of the boundaries of regions, representative governments
2 for the regions may be established by the General
3 Assembly or by concurrent action of the county legislative
4 bodies or by affirmative action of a majority of the
5 registered voters of a proposed region voting upon a
6 petition submitted by the residents of the proposed
7 region bearing the names of registered voters equal to
8 5 per cent of those voting for the Governor in the most
9 recent gubernatorial election.

10 So implicit in this is that the act of
11 creation, of original creation, rests solely with the
12 General Assembly and it is permissive. It is not manda-
13 tory. It does not have to do so, but constitutional
14 power to do so, if there is any question about it, is
15 implicit. It is to be found here.

16 By reason of the fact that the proceedings
17 there at the Brown Estate were so lengthy, the mechanical
18 problem again of transcribing all of the deliberations
19 was one which affected all of us to some extent. It
20 wasn't until actually the transcript became available
21 that the actions taken there could be reviewed.

1 Our good and able Executive Director got
2 the first shot at the transcript and felt that this
3 alternative approach was inconsistent with action taken
4 by the Commission at that time. He was unable to get
5 hold of me on Friday, that is, this past Friday. For a
6 matter of record, I was watching a very interesting
7 football game between Gilman and McDonogh, with very
8 satisfying results I might add, inso far as I was
9 concerned.

10 MR. GENTRY: Far as your son was concerned.

11 MR. CLAGETT: The son rose. When he did
12 get hold of me on Saturday, we were able to get together.
13 I asked to have available to me a copy of the transcript
14 in order that I could determine which of us in our
15 thinking had the sense of the Commission. So all day
16 yesterday I read some 200 pages of transcript until I
17 was blue in the face and I come up with the conclusion
18 that I was right initially and that our good Director
19 is mistaken insofar as his interpretation of the action
20 of the Commission.

21 All of that is brought to your attention so

1 that you can resolve the question once and for all when
2 we finally get to it. Then there can be no doubt about
3 it.

4 In order that you may follow what I have
5 been able, I think, to boil down quite briefly, in
6 the discussion at the Brown Estate there came a time
7 when the Commission voted upon the question of whether
8 or not the creation of regional governments would be
9 mandatory or permissive and voted that it should be
10 permissive.

11 Then the question arose whether the
12 Constitution should provide for the number of regions
13 when the General Assembly acted. It was there decided
14 that the Constitution would not provide for any specific
15 number of regions.

16 Then on Page 148 this discussion occurred
17 which I think is a summary of many other pages of
18 discussion. This was between the Chairman and Dr. Burdette.
19 The Chairman stated that the vote that was taken was
20 that the Legislature would first have to create a region.
21 Dr. Burdette agreed with that by saying, exactly. The

1 Chairman then said, and the question now is whether
2 the Legislature shall set up a framework of Government
3 or call into being by some other way.

4 Then there was some further discussion.
5 Then on Page 149 of the transcript, I am referring
6 to the transcript of the proceedings on Tuesday, October
7 25, 1966, the Chairman said, I take it the effect of
8 the previous vote is that the Legislature and only the
9 Legislature can define a region. Dr. Burdette agreed
10 this time by saying, yes. The Chairman then said, and
11 create the region? Dr. Burdette said, correct. The
12 Chairman: This does not mean regional government.
13 Dr. Burdette came back, as he formerly did, correct. The
14 Chairman then, we are now considering the next question.
15 We moved on into the next question. There we moved on
16 into the area of confusion.

17 Included in that part of the discussion
18 there was consideration that the local government
19 constitutionally had the power to establish regional
20 authorities or it was discussed there. That is,
21 authorities. I want to underline that word. But they

1 would not have the power to create any kind of regional
2 government in the sense of basic government. I add
3 that only by way of addendum.

4 THE CHAIRMAN: I wonder if I couldn't cut
5 across this and save time. I think it is obvious
6 from your report as to the transcript that there
7 was confusion on this subject at the last meeting.
8 The only doubt might be at what point the confusion
9 began.

10 MR. CLAGETT: Mr. Chairman, if you let me
11 finish, it will make it brief because it will get it
12 off my chest anyway. If we move to the transcript on
13 Page 167, there we took a vote and the question that
14 was submitted for vote was whether or not regional
15 representative government could be established in the
16 three alternatives provided for in Section 11.02,
17 Subsection (a) of our Seventh Report, as it appears
18 on Page 9.

19 There the vote of the Commission was, there
20 is no question about that/
21 is no question about that/being that regional representa-
tive governments could be established in any one of the

1 three alternative ways.

2 Then we moved on to Page 168. There the
3 question came up, whether or not the vote as taken in
4 relation to the votes previously taken still left
5 open to the Legislature the power to change the regions
6 around after the citizens had voted or after the
7 concurrent action of the Legislative Councils. The
8 Chairman then began to dig into the matter further
9 and the transcript discussion and summary of that
10 discussion appears on Page 169 of the transcript. The
11 vote there, as I think I already said, was that the
12 regional governments could be brought into being, not
13 just the word establish, but the question as presented
14 was that the regional governments could be brought into
15 being by action of the local governments or of the
16 citizens of the area involved. But on Page 170 of the
17 transcript I think the confusion was clarified and was
18 clarified by the Chairman in this language. I take it
19 that the combination of the two votes means that the
20 majority of the Commission feels that the Constitution
21 should contain a provision authorizing the Legislature

1 to create regions and regional governments but not
2 requiring it to do so. And the second vote means
3 that if the Legislature creates regions and regional
4 governments, then the form of government for a region
5 may be as directed or approved by the participating
6 governments or by the people of the area involved.

7 Mr. Chairman, you then went on to say that
8 that meant something along the lines of referendum.
9 Mr. Sykes said I was with you, Mr. Chairman, up to the
10 last point -- and I am eliminating the last point in
11 this sort of summary approach because I think it gets
12 us off into the area of referendum again and not the
13 point we are dealing with.

14 Mr. Martineau said on Page 172, I think we
15 all agreed with you up until the last point. So on
16 173 I think the matter was put to rest when the
17 Chairman said, we did vote, I think, to the effect
18 that unless the Legislature has acted first to create
19 regions at least, that no local government or no local
20 group could together define a region and establish a
21 government for it, et cetera.

1 I find that the matter resolved itself
2 along the line of just what we said insofar as the
3 addendum is concerned, namely, upon the creation by
4 the General Assembly of the boundaries of regions,
5 representative governments for the regions may be
6 established by the General Assembly or the other two
7 alternative approaches.

8 Now, if we are going to follow the usual
9 procedure insofar as the Commission is concerned, Mr.
10 Chairman, I think we have really got to reverse a
11 position which was clarified although it is somewhat
12 confusing. I would like to know your pleasure.

13 THE CHAIRMAN: I think in view of the
14 confusion that perhaps it would be better at this time
15 to consider the question anew and in the absence of
16 objection, I don't put this as a motion for reconsidera-
17 tion, because I am not at all sure that it is a reconsid-
18 eration, but in the absence of objection from anyone, I
19 would rule that the question is open for discussion at
20 this time. I think we will save time by following that
21 procedure.

1 MR. CLAGETT: I agree. It is too important
2 a question.

3 THE CHAIRMAN: There is no objection
4 apparently. The first question, I take it, presented by
5 your committee is the question of whether before a
6 regional government can be created, either by
7 legislature, by county governments concerned, or by the
8 people within the region, the Committee recommends that
9 the region must be established by the Legislature. That,
10 therefore, there is no power outside of the Legislature
11 to create a government for a region, until the Legisla-
12 ture has defined the region. Am I correct that is the
13 position of the Committee?

14 MR. CLAGETT: I would like to make this
15 statement by way of clarification. That is, in the
16 addendum, it is said that the thinking of the Committee
17 is that the addendum language clarifies the Commission's
18 intent.

19 Actually as I have described the mechanics,
20 the Committee never had a chance to meet and specifically
21 resolve this question. Therefore, I want to make it

1 clear that any member of the Committee is completely
2 free to approach this problem as he or she may see fit
3 without obligation one way or another to any previous
4 commitment.

5 Therefore, I do find that in my analysis
6 of the position and expression of position by members
7 of the Committee the majority of the Committee which
8 have dealt with these problems would be of the thinking
9 as expressed in the addendum.

10 THE CHAIRMAN: In order to get it before
11 the Commission, do you want to make a motion on the
12 question principally involved?

13 MR. CLAGETT: I move in lieu of Section
14 11.02, Subsection (a) as it appears on Page 9 that
15 the alternative section 11.02, Subsection (a) as it
16 appears on Page 2 be adopted by the Commission.

17 THE CHAIRMAN: Let me suggest to you if
18 I may that you change your language, instead of saying
19 "be adopted," say "be considered," because I am sure that
20 there are a number of questions about either form.

21 MR. CLAGETT: I would accept that.

1 THE CHAIRMAN: Is there a second?

2 MR. SAYRE: Second.

3 THE CHAIRMAN: Is there any discussion?

4 Mr. Sayre.

5 MR. SAYRE: There are two questions that
6 come to mind here. I just want to have them clarified
7 for my benefit. If the addendum alternative were
8 accepted, this means that you would prohibit local
9 initiative to create regional government unless the
10 General Assembly could agree to boundaries. Is that not
11 my understanding?

12 MR. CLAGETT: No, I don't think the prohibi-
13 tion would be there. I think you are getting yourself
14 into a strait jacket without having a necessity for
15 it.

16 MR. SAYRE: I read upon creation by the
17 General Assembly of boundaries. You can't have regional
18 representative government until you have those boundaries
19 pre-agreed upon by the General Assembly as I read it.

20 MR. CLAGETT: I think I have got to agree in
21 part with what you are saying but I think that you have

1 to go a little broader in your thinking. It seems to
2 me that insofar as over-all concept is concerned, you
3 have to have exclusive authority somewhere insofar
4 as the control of boundary lines is concerned. Heretofore
5 it has always rested with the General Assembly. By
6 this constitutional approach, we are trying to adhere
7 to the General Assembly having that ultimate and initial
8 original authority.

9 MR. SAYRE: That raises my second question.
10 If all powers not otherwise denied are the counties',
11 you are here denying those counties the power you
12 granted them in the other part of the Constitution.

13 MR. CLAGETT: No, I don't think that follows
14 because the counties have all powers to deal with
15 problems within the counties. They don't have powers
16 to deal with statewide problems or problems that go
17 beyond the counties and create boundaries for
18 other counties or areas.

19 MR. SAYRE: Then it is your intention to
20 prohibit one county from agreeing with another county
21 as to an authority or representative government?

1 MR. CLAGETT: Not with respect to an
2 authority. Only with respect to the establishment of
3 a basic form of government which is, as we defined it,
4 a representative elective form of government.

5 MR. SAYRE: I understand. Let's take
6 Montgomery and Prince Georges, for example. You have
7 two counties and in its entirety would be a boundary.
8 Unless the General Assembly could agree that these two
9 counties constitute a regional boundary, they cannot
10 act.

11 MR. CLAGETT: Wisely so, I would think.
12 I would hate, as I believe it elsewhere has been commented,
13 I would hate to see a region composed of only two or
14 only three counties. I think that the debate we had
15 back at the Brown Estate clearly pointed up one thing.
16 The desirability of not having a proliferation of
17 regional governments. That means that if you get into
18 twelve or whatever number you might have, you are
19 getting into a very serious area of confusion. The
20 argument is a very good one that there should be some
21 limitation to five or something less rather than more.

1 MR. SAYRE: I have another problem here.
2 Just suppose somehow despite this we had a regional
3 government composed of three, say Howard, Montgomery,
4 and Prince Georges Counties. Suppose that this represen-
5 tative regional government wanted to have an agreement
6 with the District of Columbia and various jurisdictions
7 in Virginia to have an intergovernmental authority. I
8 don't see how that could be done if you have this addendum.

9 MR. CLAGETT: Of course, you are now
10 dealing with the District of Columbia, you say, and you
11 are transcending the bounds of the state and you may
12 run afoul of the compact laws or may run into some
13 Federal constitutional restriction.

14 MR. SAYRE: I see the greatest need for
15 intergovernmental authorities being across state lines.

16 MR. CLAGETT: I do also. Isn't it true
17 there is nothing in this construction that restricts
18 it. We don't provide for it and therefore prod or
19 suggest in that direction?

20 THE CHAIRMAN: It seems to me your last
21 question, Mr. Sayre, is directed not so much to this

1 section as it is to the other section dealing with
2 intergovernmental authorities.

3 MR. CLAGETT: Right, but you did suggest one
4 very important point directly related to what we are
5 talking about. That seems to me to be this. If you
6 permitted two counties to get together and decide upon
7 a region and they did so, and then assuming that they
8 went on and provided for the structure of that region,
9 you then got a situation where it might be completely
10 incompatible with the interests of the 22 remaining
11 counties that would then compose a region. If you created
12 a region over here, the remainder would constitute a
13 region. So what you are doing is you are then permitting
14 a very confusing state of affairs to be initiated.

15 Rather than do that, it seems to me if the
16 need and the time would determine the need or the need
17 would determine the time, whichever way you want to
18 look at it -- it seems to me that then the body which
19 has the ultimate authority of government would be the
20 General Assembly. The pressure then would be so great
21 from these two counties through their representatives

1 or so great from other sources that the fear or worry
2 about the General Assembly not acting would be overcome.
3 The General Assembly would then be pushed into going
4 ahead and creating regions. Then the flexibility
5 we built into the structure of counties could be
6 applicable insofar as the structure of government
7 for those regions.

8 If the General Assembly having created the
9 regions didn't go further and provide the methods and
10 procedures by which the structure of government should
11 be handled, then would come into play concurrent action
12 of counties within a region or the petition procedure.
13 It seems to me to make a much more orderly satisfactory
14 approach to the whole problem.

15 I want to say one other thing and then I
16 will sit back and let the debate take care of itself.
17 This is apropos of the opening remarks of the Chairman.

18 As I have tried to view the work of this
19 Committee objectively and as I have had the chance of
20 contacting and getting the reaction of various persons
21 in and about the county and elsewhere, this has included

1 cocktail parties and everywhere I have gone, I have
2 come to share the burden of fear of our whole year and
3 a half's effort being nothing more than what Mr. Case
4 characterized it at the outset, an interesting study of
5 government. That is where it will lie.

6 I find very definitely with respect to this
7 provision of our Constitution that we are exposing
8 ourselves to a very, very strong public reaction. I
9 have used my own thinking as a gauge to some extent
10 because, as the arguments pro and con have been made,
11 I have found that I am just not ready to accept a
12 regional form of government without at least giving a
13 fair experiment to the other new things that have gone
14 into the creation of this article, the broad grant of
15 powers to the counties, primary and basic purpose of
16 activating the county and giving it a means of being
17 able to cope with problems, provision for intergovernmental
18 authorities, the degree of flexibility that the General
19 Assembly will have to take care of problems extending
20 beyond county lines, the intrastate intergovernmental
21 cooperation procedures that is met with here. Those are

1 things which remain to some extent untried.

2 To lay all those aside and project ourselves
3 into a regional government set up as we are standing
4 on rostrums and trying to explain all these things
5 to a group, and we talk about the matters I just mentioned,
6 then if we immediately jump into this regional government,
7 the one thing that will be the match setting the pile
8 on fire is going to be this regional government thing.
9 We are going to get a very, very strong reaction against
10 it.

11 I point that up not to say, not to provide
12 for it as we have done here, but don't go so far that
13 we begin to define and mandate it in a sense which
14 could cause the consequence which I am touching upon
15 and pointing out here. I think we are going to get
16 acceptance of the home rule broad grant, I think we will
17 get acceptance of many other provisions. I am laying
18 it on the line clearly and firmly as a warning, we are
19 not going to get acceptance of regional government.
20 Consequently, where it is unnecessary although ideologically
21 and the ideological thinking backed up with some practicality

1 and immediate problem, I feel that it would be a very
2 unwise courseto push this thing on-beyond what we have done
3 here and what would be taken care of adequately by the
4 addendum. Basically the argument is that the General
5 Assembly should have ultimate authority to start this
6 thing, then the structure, form, development of it,
7 taken care of by the alternative approaches.

8 THE CHAIRMAN: Mr. Scanlan.

9 MR. SCANLAN: That was my question. I
10 remember in the debate on this issue a number of persons,
11 including the Chairman, made the point, validity of
12 which I now concede, it would be unrealistic to conceive
13 of the General Assembly creating regions without taking
14 the next step and creating the representative government
15 for that region.

16 My question is this. Is it clear or unclear
17 whether the General Assembly, having created regions or
18 region and having established a representative government
19 for that region or regions, could the people within the
20 region alter that form of government under Section 11.02
21 (a) or must they take and abide by the form of government

1 the General Assembly, in establishing the region, gave
2 them.

3 MR. CLAGETT: I think that question is implicit
4 in both drafts of 11.02(a).

5 MR. SCANLAN: What is the answer?

6 MR. CLAGETT: The answer is I would say that
7 once a region has been established, and let's assume
8 the General Assembly goes the next step and creates the
9 structure for it, that there must be provided in that
10 plan or instrument of government a power to amend by
11 the people of the region. Consequently the change of
12 that instrument of government would rest with the people
13 for whom and over whom it is applicable.

14 MR. SCANLAN: What you are saying is even
15 though the Constitution doesn't specifically provide for
16 it, it would be your hope that when a representative
17 government was established initially by the General
18 Assembly, in that establishment, whatever the form or
19 structure, there would be a provision for amending that
20 form or structure by people in the region.

21 MR. CLAGETT: It is inconceivable to me that

1 it would not so provide, and even though, insofar as the
2 instruments of government provide for this, our
3 provision for the counties, we did see fit to specifically
4 provide there for amendment by a majority vote under
5 Section 11.04, Subsection (c), where we are dealing with
6 the structure of county governments, I think that is
7 really an unnecessary provision. We have it in here.
8 I would have no objection to going a little bit further
9 if it became necessary and providing a similar pattern
10 or setup for the regional governments.

11 However, I fear again that we have already
12 given it enough emphasis and if we keep on adding to it,
13 we are going to give it an overemphasis which then puts
14 us into the area I was trying to say where I recognize
15 a very real monster that could destroy the whole effort
16 here.

17 THE CHAIRMAN: Mr. Case.

18 MR. CASE: Mr. Clagett, what useful or
19 practical purpose is served by a multi-county regional
20 representative government that is not served by the so-
21 called multi-county intergovernment authority and the

1 complete freedom of counties or county and Baltimore
2 City to contract among themselves? In other words,
3 what real good will flow to the people by this new
4 type of government which couldn't be obtained through
5 the authority.

6 MR. CLAGETT: I am not going to argue the
7 merits of that one because it is contrary to my thinking.

8 MR. CASE: I am not asking for an argument.

9 MR. CLAGETT: I am only saying I am agreeing
10 with what your question implies. I think they are
11 two alternative approaches. I don't think we ever
12 tried the intergovernmental authority approach, I don't
13 think we know, we have seen warning signs from New
14 Jersey, from New York, others, where there has been a
15 proliferation of authorities and those authorities are
16 nonrepresentative, they are appointed, they are detracting
17 from what we understand to be true representative
18 government.

19 I agree with that criticism. However, I think
20 the intergovernmental authority approach, as we have
21 utilized it in this state, has been a good one. As I

1 pointed out earlier, there are only a very small
2 number of intergovernmental authorities that have been
3 brought into existence and only 28 of the total number
4 are ones dealing with problems of government such as
5 the Washington Sanitary Commission, Park and Planning
6 Commission, Baltimore Port Authority, et cetera. I don't
7 have the fear of intergovernmental authority that has
8 been expressed here. I don't find that I am at all
9 anxious to get into a proliferation of governments and
10 consequently, I am not the one to argue the merits of
11 that.

12 MR. CASE: May I summarize your answer by
13 saying that at least, as I see it, there is no useful
14 purpose.

15 MR. CLAGETT: No, I can't go that far.

16 MR. CASE: What is the useful purpose you
17 see?

18 MR. CLAGETT: I am afraid of my own lack of
19 wisdom. I am afraid that maybe this regional device is
20 better than I think it is. Or could be a medium of
21 taking care of problems which we recognize to exist.

1 I am afraid to eliminate it.

2 MR. CASE: I am not afraid to eliminate it
3 if it doesn't serve any useful purpose.

4 MR. CLAGETT: I would rather turn the answer
5 to that question over to some of the others that will
6 give you the answer.

7 MR. CASE: Who can answer it?

8 THE CHAIRMAN: Mr. Scanlan.

9 MR. SCANLAN: I have an amendment in part (a)
10 which indicates my concern about inability of people in
11 the region to change the form of government once it is
12 thrust upon them by the General Assembly, even though
13 Mr. Clagett feels that probably would be taken care of
14 by statute. Secondly, to accommodate Mr. Case's concern
15 that maybe the future will show that really these
16 representative governments may be unnecessary. I would
17 suggest the following amendment. In the third line of
18 the addendum --

19 MR. CASE: I think Mr. Scanlan is out of order,
20 Mr. Chairman --

21 THE CHAIRMAN: Motion before us is not to adopt

1 Section 11.02 (a) but merely to consider it instead of
2 the other 11.02. I would like to attempt to answer
3 Mr. Case's question by summarizing briefly what I under-
4 stand to be the distinction between the concept of
5 regional government and the concept of an authority or
6 a succession of authorities or proliferation of
7 authorities to accomplish these various purposes.

8 MR. CASE: I wish you would.

9 THE CHAIRMAN: Mr. Loevy has come in. He
10 can supplement what I have to comment. I think generally
11 speaking the idea of the authority is it is a body
12 designated to exercise a particular function or group of
13 functions that normally would be exercised by the
14 government of a region.

15 As, for instance, to provide sanitary sewers
16 or water or a number of other things.

17 The authority may perform one function and
18 most commonly does perform one function or at most a
19 series of two or three very closely related functions
20 such as sanitary sewers and water. The concept of
21 regional government, on the other hand, is that it is

1 an agency of government that exercises multi-purpose
2 functions of government of a particular region, not
3 necessarily but perhaps including all of the governmental
4 functions of a particular region.

5 So that it is a much more comprehensive governing
6 device.

7 The reasons why it is thought that the regional
8 government is better than the intergovernmental authority
9 briefly are these. That when you establish a governmental
10 authority of any kind to provide for a particular
11 service or a particular function, you first off, quite
12 often, pick the people who are exercising that function,
13 the supervisory board, for their particular skill in
14 furnishing that service. If you have a sanitary
15 commission, you are thinking of people with particular
16 skills in administering or supervising or providing for
17 sanitary sewers. If you are thinking of transit, you
18 are selecting a commission which will have particular
19 skills in supervising the many problems connected with
20 a mass transit system.

21 Whereas, when you are selecting a government,

1 you are thinking broadly of persons who will exercise
2 the sovereign right of the people to govern themselves
3 or some part of it. You are thinking, therefore, of
4 people with different qualities.

5 If you had only one function that you were
6 concerned about in metropolitan government, whether it
7 is transit or sewers or water or any one of the other
8 problems that arise in connection with metropolitan
9 areas, I don't think there would be much doubt but that
10 a governmental authority would be the simplest and
11 probably the best means of solving that problem. The
12 difficulty comes about when you have in connection with
13 a region the necessity to provide for many more than one
14 or two or three functions. This usually embodies the
15 desirability, if indeed not the necessity, of providing
16 a government that has the power to tax in order to
17 provide these services. The minute you get into the
18 area of the power of taxation, then in American thinking
19 at least you usually think in terms of a representative
20 government. I think that was illustrated by the action
21 of this Commission, not merely at the last session, but

1 at the one before, or two before that, in insisting that
2 if an authority or a governmental unit is to have the
3 power to tax, it must be a representative body, that
4 we should not have taxes imposed by other than represen-
5 tative bodies. Generally speaking, the people who have
6 written most in this area advocate that the proposition
7 that the ills and problems, the conditions which must
8 be met in providing for all of the problems that exist
9 with respect to a metropolitan area cannot be solved
10 by any one authority or by a series of authorities, and
11 that the only solution is to provide a governmental unit
12 which can exercise all or whatever of the powers of
13 government over a region may be necessary to solve the
14 problem.

15 As I understood the previous actions of the
16 Committee here, they amounted to this. That the Committee
17 was unwilling to go so far as to say that there should
18 not be any longer any governmental authorities, any
19 single purpose or limited purpose governmental authorities.
20 This is a position advocated by some, that you should
21 prohibit these authorities and permit only full governments.

1 The Committee was unwilling to go that far.

2 The Committee, on the other hand, was also
3 unwilling, as Mr. Clagett indicated he personally is
4 unwilling, to take the position that all the problems
5 can be solved by authorities and that there is no
6 necessity for the regional government. So that the
7 Committee's view has been that the regional governments,
8 that is, a government larger than the present county
9 governments, but a full government, ought to be permitted.

10 The question that has been the subject of so
11 much discussion is who should have the initiative in
12 creating such a region and such a regional government.
13 As I understood the position of the Committee heretofore,
14 it was that the Legislature, and only the Legislature, should
15 have the power to create a region for which a government
16 could then be established either by the Legislature, by
17 the concurrent action of the county governments involved,
18 or by the people within the region. But that neither of
19 those three instrumentalities could create a regional
20 government until the Legislature had first created a
21 region by defining the boundaries of an area.

1 That's not a very expert explanation of the
2 difference but it is my understanding. Dr. Loevy, could
3 you add to that in answer to Mr. Case's question? I
4 think you were here when he asked it.

5 DR. LOEVY: I think you summed it up completely.
6 I have nothing to add to it.

7 THE CHAIRMAN: Mr. Brooks.

8 MR. BROOKS: I don't believe I can add very
9 much. I think from the work the Committee has done, it
10 has become clear, not only that there is already some
11 apprehension in certain areas of the state concerning
12 the multiplicity of authorities that already exist --
13 and I believe Dr. Burdette mentioned last time, we can
14 get him to establish again, he was commenting on how
15 many special authorities exist in Prince Georges. Was
16 it 150 or 152 or 153?

17 MR. CLAGETT: 155.

18 MR. CASE: Bi-county authorities?

19 MR. CLAGETT: No.

20 MR. CASE: That's what we are talking about
21 though.

1 MR. CLAGETT: Of which only twelve are exercis-
2 ing governmental functions. The others are special
3 drainage districts, or some singlepurpose, but they are
4 farming districts or something of that kind.

5 MR. CASE: They are not authorities.

6 MR. CLAGETT: They are counted as authorities
7 in the 155.

8 MR. CASE: By whom?

9 MR. BROOKS: The concern is whether these
10 attempt to solve a problem only within the count y or
11 whether they are bi-county and so forth that they are
12 single purpose directed and that the need for coordination
13 of these authorities is such that some kind of coordinating
14 body is required rather than just letting each Commission
15 or each authority go in its own direction.

16 It is this thought that has stimulated the
17 concept that there needs to be some over-all government
18 that is responsible for coordinating the functioning of
19 all these authorities. And there has been expressed
20 some interest already in the state in having some
21 coordinating body with the responsibility of carrying

1 on the functions of a number of these which are now
2 separate authorities under one umbrella, so to speak.

3 These authorities which can have taxing
4 authority, it is thought, should be also representative
5 rather than appointed.

6 For instance, it has been in the minutes on
7 several occasions recently that the authorities that
8 already exist, which are multi-county, do not respond
9 to anybody once they are established. There is no way
10 to actually get them to operate necessarily.

11 For this reason too, it is thought if these
12 are in some way representative, then there is someone
13 to whom these people who have the responsibility of
14 providing services on a basis or area greater than a
15 single county would be responsible to.

16 MR. CASE: Mr. Chairman.

17 THE CHAIRMAN: Mr. Case.

18 MR. CASE: If the argument is that the authority
19 cannot perform the service, cannot service the needs of
20 the people in a region where those needs are multiple,
21 that, therefore, you have to go to this new type of

1 government, because there are many things that have to
2 be done and just one authority can't do it, you don't
3 want a proliferation of authorities, why isn't the easy
4 answer to it to create a new county?

5 THE CHAIRMAN: Tradition, I suppose. You would
6 have a tremendous obstacle, for instance, if you tried
7 to create a new county or city composed of Baltimore
8 City and Baltimore County and Anne Arundel County.
9 Much more so than you would have if you created a
10 regional government to exercise a great many of the
11 governmental functions in that same area, metropolitan
12 functions.

13 Theoretically, you could, of course, accomplish
14 exactly the same purpose by simply enlarging the county
15 to embrace the economic or other area involved.

16 MR. CASE: So that the multi-county regional
17 representative government really is a pragmatic or
18 practical approach to what you are trying to reach.

19 THE CHAIRMAN: Yes, because you might have
20 this, for instance. You might take the Baltimore City
21 area, you might have the people perfectly willing to

1 create a regional government to provide for transit and
2 sewer and sanitary and storm sewer and water and public
3 health and such things but be unwilling to merge the
4 judiciary of the city and the two counties.

5 MR. CASE: Wouldn't make any difference.
6 It is all state under our proposal. Would make no
7 difference.

8 THE CHAIRMAN: Yes, it would, because of the
9 provisions you should have county residency requirements
10 in the counties, et cetera.

11 MR. CLAGETT: What you are saying there, Mr.
12 Chairman, is it is possible under a regional form of
13 government to have less than a full=fledged government.

14 THE CHAIRMAN: Yes, no doubt about it.

15 DR. BARD: Right.

16 MR. BROOKS: On the other hand, it might
17 be pointed out from the outset the Committee wanted to
18 permit maximum flexibility in alternatives and the one
19 Mr. Case mentions is one of those they attempted to
20 improve, one which is the means for changing the county
21 lines, so that if it is feasible to merge counties where

1 it is desirable to do so, politically perhaps it is
2 more possible than it was under the old Constitution.
3 This approach was and is one of the ones being suggested
4 here. That is one of three approaches envisioned by
5 the Committee.

6 The other, in addition to the regional govern-
7 ment, is a multi-purpose authority. The Commission, at
8 this point, indicated a desire to leave that alternative
9 only. There are three different, entirely different
10 approaches to the same kind of problems permitted in this
11 draft.

12 MR. CASE: Is it necessary to have all three?

13 MR. BROOKS: It is maximum flexibility which
14 is the principle the Committee wanted to endorse.

15 MR. CASE: Why not say they can do anything
16 they want to about anything? That gives them maximum
17 flexibility?

18 THE CHAIRMAN: Dr. Bard.

19 DR. BARD: Our Constitution should sit for a
20 long period of time. It has become evident these are
21 records being used by various governments on this

1 continent and elsewhere. That they are avenues for
2 coming to decisions. Where you have cases like Dade
3 County, Florida, Toronto, this particular continent,
4 London, other situations, we might point to, in regard
5 to the possibility of the flexibility we talk about, I
6 don't think we should write a Constitution that would limit
7 us to just the major avenues that are being used at the
8 moment. I do think that herein we have multiple approaches.

9 MR. CASE: We are not writing a Constitution.
10 We are trying to make meaningful suggestions.

11 THE CHAIRMAN: Any further discussion?

12 JUDGE ADKINS: A question that I'm sure is
13 clear in a good many minds but not in mine. In event
14 a regional government is established, in the event it is
15 given what amounts to complete governmental powers
16 within the area, does that then constitute a dissolution
17 of the existing governmental bodies within the area?

18 MR. CLAGETT: No.

19 JUDGE ADKINS: Or if not, how do you reconcile
20 the conflicts that are inevitably going to arise between
21 existing governmental bodies and the superimposed governmental

1 body if you do not make them subject to or creatures of
2 the existing, the newly created regional government.

3 MR. CLAGETT: That carries you naturally into
4 Subsection (b) of Section 11.02, an awareness of that
5 very problem moved me along to provide for that, the
6 setting up of the whole of the regional provision in a
7 separate section.

8 In Subsection (b) we say that in order to
9 resolve this conflict, the powers to be given to this
10 regional government shall be either by the consent of
11 the counties within the regional government relinquished
12 to it -- if they relinquish power, there is no conflict --
13 or by the General Assembly delegating of its own power
14 where it is not relinquished. I think the answer is
15 in the method by which we have provided powers shall
16 be vested --

17 THE CHAIRMAN: There is a third one that is
18 General Assembly by general law withdrawing power from
19 the county leaving it with the regions.

20 MR. CLAGETT: Yes.

21 MR. CASE: Just to illustrate what Mr. Adkins

1 is talking about, giving all due respect to the large
2 degree of flexibility we are reaching for here, in Prince
3 Georges County it would be entirely possible to have
4 four separate governments imposing four separate sets
5 of taxes, having four different kinds of bond issues,
6 all in the same town of Hyattsville. You would have
7 the municipality which is preserved under this. All of
8 its powers. Powers to levy municipal taxes and
9 impose and raise revenues and capital funds through bond
10 issues. You would have Prince Georges County which can
11 do the same thing. You would have this regional govern-
12 ment which could include the same thing. You would have
13 the State of Maryland which could do the same thing.

14 MR. CLAGETT: The only break on this would be
15 by the addendum approach which is the regions must be
16 determined by the General Assembly.

17 MR. CASE: Yes, but once determined, it would
18 be a logical area to put Hyattsville with Silver Spring.

19 MR. CLAGETT: That is the matter of proliferations.
20 whether

20 MR. CASE: If it isn't, I don't know/it is.

21 THE CHAIRMAN: The answer is if a regional

1 government is created within any given area in a region
2 which is also in an incorporated city, a municipality,
3 it is possible to have action by four governmental
4 units. In some states it is possible to have action
5 by even more than four governmental units. At the
6 present it is possible to have action by three.

7 MR. CASE: Is this good?

8 THE CHAIRMAN: It seems to me it is good or
9 could be good and it comes back to the basic question
10 that we have got to consider and make a recommendation
11 about. That is what is the best way of solving a problem
12 that exists whether we want to face up to it or not
13 with respect to every metropolitan region. There isn't
14 any doubt about the problem existing. There isn't any
15 doubt that the problem cannot be solved solely by the
16 independent action of the existing governments whether
17 they are county or city governments. They have to be
18 solved. Steps are being taken to solve them by some other
19 means.

20 The question really is whether you are going
21 to say that the means shall be only an intergovernmental

1 authority of some sort which is to the extent that it
2 controls sewers or whatnot a fourth level of action
3 within any given area, or are you going to say that if
4 in a metropolitan area which embodies more than one
5 county there are more than one county there are more
6 than one problem or function which must be resolved
7 on a multi-county basis are you going to do it by a
8 series of authorities or are you going to do it by one
9 comprehensive authority or governmental unit? It seems
10 to me that is really the only question at issue here.

11 I personally would favor the resolution of
12 that question by one. I would much rather see one
13 governmental authority for the Baltimore Metropolitan
14 region exercising whatever multi-county functions are
15 necessary to be exercised by one authority than to see
16 a number of them. But whether that is the proper approach
17 or not, I would be very chagrined to see us take any
18 action which would in any way prevent the Legislature
19 from adopting that course. It seems to me that we ought
20 to say that we ought to point the way and say that a
21 method of accomplishing this purpose is by a regional

1 government, a method is by intergovernment authority.

2 We don't have the wisdom to decide today for all time
3 in the future in the Baltimore area and Washington area,
4 which may and probably will some day be one area, which
5 is the best method. We leave that to the Legislature.

6 We again have the further question as to
7 whether we want to leave it solely to the Legislature or
8 whether the people want to leave it solely to the Legisla-
9 ture or whether they want to say that if the Legislature
10 does not take the initiative, the county governments
11 involved or the people can take the initiative. I
12 personally would also favor that approach. But I see the
13 practicality of insisting that the various counties,
14 either the county governments, or the people within a
15 county should not have the power to chop up the state in
16 whatever regions seem to them best at the moment.

17 On purely practical grounds, I would therefore
18 favor the notion advanced by the Committee that the
19 region be defined by the Legislature simply because I
20 don't see how you can leave to the people scattered through-
21 out the state the creating of the boundaries of governmental

1 regions. But I would also feel that once the region
2 is established, there ought to be machinery in the
3 Constitution by which either the Legislature or county
4 governments or the people could provide the government
5 for that region. Mr. Case.

6 MR. CASE: Mr. Chairman, let me just close
7 out my part of this because I am really seeking answers
8 here, not trying to provide them.

9 One of the things I have difficulty in follow-
10 ing your approach is when you say you would rather see
11 one regional government than a multiple authority
12 approach, the difficulty is that if you have one
13 multiple government, they are going to have to have
14 groups to handle these various things. They are going to
15 have to have, if it is to be public safety, they have
16 to have a police board or police commissioner. If there
17 is going to be water or sewer, they will have to have
18 people to do that. If it is to be trash collection, people
19 to do that. There will be a multiplicity of agencies
20 which are going to be handling these governmental
21 functions. You can't say you got one government and there-

1 fore it is all going to be taken care of as a unit. It
2 is going to be fractionalized just as sure as authorities
3 are.

4 Leaving that aside, I think that is a weakness
5 in your position, leaving that to one side, I can say
6 this much from personal experience in working with
7 government agencies throughout this state and discussing
8 with people who are knowledgeable on this subject in
9 New York and elsewhere about the credit rating counties
10 receive and their ability to borrow funds, vis-a-vis this
11 proliferation of governmental authorities. This doesn't
12 come out of any text book or from any philosophical thinking
13 about these subjects but is true practicality. It is
14 this. The more overlapping governmental units that you
15 have in any given area, the less its credit standing
16 will be in the eyes of people who have to lend money
17 to those areas.

18 I think it is fair to say that it was for this
19 very reason that Prince Georges County and Montgomery
20 County lost their preferential rating as far as their
21 borrowing capacity was concerned in the early fifties.

1 I might add only by great effort was it restored to
2 both those counties.

3 I have heard the experts on this subject say,
4 it so often, that I am genuinely concerned about the
5 multiplicity of government on top of government because
6 I know that, for example, in Baltimore County where you
7 don't have this, people outside of the state look upon
8 this as a very healthy situation, one which is good.
9 Whereas in certain other areas of the state where you
10 have this proliferation and multiplicity, I think, look
11 upon it as bad.

12 This may not be the overriding concern. To
13 me it is a very important concern. But I think that it
14 ought to be taken into consideration.

15 My third point is that we ought to allow flexi-
16 bility in the Constitution. I say that if this is a
17 matter of sufficient concern, then another approach
18 would be to prohibit rather than foster something which
19 is going to hurt our counties and our municipalities
20 and ultimately our state itself. So there is the flexible
21 approach, there is an alternative to that.

1 My fourth point is in view of the tremendous
2 controversy that this matter is going to engender,
3 and because there are very genuine concerns about it,
4 I am wondering if this isn't an area where the Commission
5 might indeed suggest alternative approaches and point
6 out the pros and cons of each without attempting to be
7 definitive as to either but to point the way to the
8 Commission because I again repeat, Hal Clagett refreshed
9 my mind about this, I again repeat that I think the
10 greatest mistake this Commission can make is serve up
11 to the convention a take it or leave it document.
12 If you do this, the resentments are going to very heavy.
13 They are heavy already. I have been around the state
14 and I know what people are saying. It seems to me that
15 this might be the perfect example of a place where we
16 can point out in our report here are a number of
17 alternatives. Here are the pros and cons of each of
18 them. We made this study and this is what we are doing.
19 This is in my judgment, ladies and gentlemen, a real service
20 group can perform.

21 THE CHAIRMAN: We are a little past the hour

1 of adjournment. Let's adjourn now for lunch and if we
2 possibly can get back by 2 o'clock.

3 (The Commission adjourned at 12:55 p.m. for
4 lunch to reconvene at 2 o'clock.)

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CONSTITUTIONAL CONVENTION COMMISSION

AFTERNOON SESSION

November 21, 1966 - 2:00 p.m.

University of Maryland Law School, Baltimore, Maryland

Appearances as heretofore noted.

Reported by:
A. A. Castiglione

1 THE CHAIRMAN: May we resume? The question be-
2 fore you is on the motion that Section 11.02 (a), alternate
3 form, on Page 22 of the Report, be considered by the
4 Commission instead of Section 11.02 (a), as it is presented
5 on Page 9. Let me make this statement in the interest,
6 perhaps, of saving time, because I think it's obvious that
7 unless we move forward much more rapidly than we were able
8 to this morning, we will have to have a session this
9 evening.

10 I think the discussion this morning indicated
11 rather clearly that there isn't so much a division among the
12 Commission as to what powers should ultimately be in the
13 Constitution as it is how best to express these in whatever
14 report we present to the people and to the Legislature. I
15 think that there is general agreement on the notion that
16 in this area, particularly, it is of even greater importance,
17 perhaps, that the report accompanying the drafts of the
18 Constitutional provisions indicate the nature of the prob-
19 lems, the uncertainty as to the best possible solution and
20 the number of solutions that are possible.

21 Also, in connection with the particular sections

1 that we are now dealing with, I think all of us would agree
2 with the principle that the alternate forms should be pre-
3 sented in the report. The problem here is that in effect
4 the alternate forms would be presented by the discussion in
5 the report rather than in the precise language. In other
6 words, the difference in approach is not a vast difference
7 in drafting. Very slight changes in the section ultimately
8 adopted would determine the difference in approach, as, for
9 instance, the question of whether the Legislature and only
10 the Legislature can create regions and so forth. I think
11 all of us are in accord that it is very important that the
12 Constitution contain at least the authorization of power of
13 the Legislature to solve the problems of metropolitan areas
14 with whatever means could best accomplish that purpose.

15 One other thing I wanted to comment on. I have
16 very definitely the feeling from discussion with a number
17 of the members that there are problems with reference to
18 the precise language of this Section, much more so than with
19 other sections. Many of these problems are more stylistic
20 rather than substantive. With that in mind, I would suggest
21 that, in considering the motion now before you, you consider

1 it in that context. It is not a vote to approve the form
2 of 11.02(a) alternate, on Page 22. It is merely that, for
3 purposes of further discussion this afternoon, we concen-
4 trate on that section as a point of departure rather than
5 11.02(a), on Page 9.

6 Now, is there any further discussion of the
7 motion before you, which is that we consider Section 11.02
8 (a) as printed on Page 22, instead of as printed on Page 9.
9 Mr. Sayre?

10 MR. SAYRE: I would like to express opposition
11 to the alternative section 11.02 in the addendum. The way
12 I interpret this provision is a veto on local initiative
13 and I would favor the way it stands now in the body of our
14 text. There are several points here that I don't think have
15 been brought out and one is the matter of political feasi-
16 bility.

17 This is bandied around without reference to what
18 already exists or what could develop by alternative methods,
19 if you consider the alternatives. The body of the text
20 provides, I believe, the best political feasible approach
21 which has all flexibility and alternatives that you might

1 wish to select. It enables you to have representative
2 government where you are going to be taxed.

3 Also, one point that I think is overlooked is
4 that in regard to a taxing unit, if you have a government
5 that can coordinate one function with another function, and
6 this is very important, coordinate, then you can make sense
7 out of all the functions that this government would handle.

8 For example, water lines would not be set out
9 without some pre-zoning. There would be coordination be-
10 tween zoning and water and sewer lines.

11 THE CHAIRMAN: Mr. Sayre, let me break in on you
12 to make this statement, as to what I understand to be the
13 difference between the two sections and the only question
14 before us, now.

15 MR. SAYRE: All right.

16 THE CHAIRMAN: And to clarify it, I would so
17 rule, the difference between the two sections is that under
18 Section (a), on Page 9, creation of a regional government
19 and creation of a region may be by anyone of the three
20 methods suggested, by the Legislature, by concurrent action
21 of the county governments or by the people within the

1 region. Under the alternate form on Page 22, creation of
2 the region can be accomplished only by the Legislature after
3 the region is established. Creation of the government for
4 the region may be in any one of the three ways.

5 Neither section resolves the problem of who may
6 change the government of a region subsequent. So, that
7 would be open to discussion, no matter which one of the
8 two alternates is adopted.

9 MR. SAYRE: All right. To cut this short, then,
10 in the addendum you are establishing a potential veto for
11 any type of all the alternative approaches that I think are
12 politically feasible, by virtue that the General Assembly
13 has to initiate boundaries in the first place. If our
14 body of the text is good theory, then it's good in practice,
15 or else the theory is no good and I think we have to get
16 back here to what really constitutes good theory.

17 Also, I think we have to have the ability to
18 adapt. We've got that ability in the body of the text.
19 I would rest on that.

20 THE CHAIRMAN: Mrs. Freedlander.

21 MRS. FREEDLANDER: Mr. Chairman, since Mr.

1 Claggett, the Chairman of the Committee, has freed the
2 members of the Committee to speak, freed them so graciously
3 at the beginning of his presentation, I would like to speak
4 against 11.02(a). It's precisely for the reasons he had
5 cited at the last meeting and this meeting.

6 The grant of home rule to the counties,
7 allowing the maximum flexibility, that I feel that the
8 original Section 11.02 allows that, because it allows
9 the alternatives from beginning to end, creation as well as
10 implementation, and I think that this is important for this
11 particular Constitution, that we allow this flexibility,
12 that we really mean what we say when we say home rule for
13 the counties, because these are new concepts, concepts that
14 this Constitution cannot ignore and, therefore, I would
15 urge that we keep the original 11.02, as agreed by the Com-
16 mittee.

17 THE CHAIRMAN: Any further discussion? Mr.
18 Brooks?

19 MR. BROOKS: Just two points. One, as mentioned
20 in the staff memo that was distributed, I call your atten-
21 tion particularly to four questions on Page 4, and those

1 are primarily Questions 2, 3 and 4. I think the real ques-
2 tion is should the General Assembly have a power which it
3 did not have, say nothing in the Constitution at the
4 present time about the power of local government to create
5 intergovernmental agreements or to create any kind of
6 regional government.

7 At the present time, as most of you are aware,
8 the counties can do this without any authorization, under
9 the Constitution. The Committee sometime ago decided that
10 it would be good to encourage this by having a specific
11 section encouraging and so proposed Section 11.06, which
12 would recognize this authority. A provision such as the one
13 in the alternative draft, Page 22, which would give the
14 General Assembly a veto power over the initiative/ ^{of} a local
15 county or the petitioning residents of any of the counties
16 involved to create any kind of regional governments, if it
17 is in the nature of a veto power, not only really destroys
18 the alternatives available in Section 11.02, as originally
19 proposed, but also it would seem to really have the opposite
20 import of 11.06, from that that the Committee had at the
21 time it recommended 11.06.

1 In addition, on Page 4 of the staff memorandum,
2 you will see the proposed Questions 2, 3 and 4, which is
3 that the General Assembly should in fact have the power and
4 the authority as an exclusive power to create the regions or
5 boundaries of whatever intergovernmental regional govern-
6 ment or authority should be created and perhaps this is a
7 power that should be exclusively that of the General Assembly.
8 Then, it's probably important, also, to consider how this
9 power should be phrased and whether it should serve as a
10 veto power or an alternative, whether or not this power
11 should be one that does not have to be exercised by the
12 General Assembly until there is a request or an exhibit of
13 interest on the part of the local government either through
14 the action of the county legislative bodies or by the pe-
15 titioners, that would be the residents within the group of
16 counties interested in creating such a body; but that upon
17 such an exhibit of interest, either by a petition to the
18 General Assembly or acts by the legislative bodies of the
19 counties, then perhaps it would be well for the General
20 Assembly to be in a position where it is no longer a veto
21 power over whether or not they decide to create the

1 boundaries, but becomes an act which they have to perform,
2 so as to facilitate the initiative that is recognized in
3 the original 11.02(a), of either the counties or the
4 residents initiating a proposal.

5 To just say that the General Assembly can veto
6 it, of course, would completely negate any kind of initia-
7 tive by the counties or the residents in the area.

8 THE CHAIRMAN: Any further discussion? Mr.
9 Clagett?

10 MR. CLAGETT: Mr. Chairman, just briefly, to
11 reply to the matter of veto being inherent in the alternative
12 section on Page 22, and in the addendum, I point out to you
13 that insofar as the section which I am asking be disregarded,
14 you've got three vetos. You've got the concurrent action
15 of the councils. Then after they act, you've got the
16 petition, and the people create a different area and ex-
17 tend the boundaries, thus vetoing the establishment of the
18 boundaries by the concurrent action of the legislative
19 councils. Now, you've got two regions.

20 Then, along comes the General Assembly and it
21 says, I don't like anyone of these two. So, it creates

1 a third region, including the first two regions and thus
2 vetoes. Then you start the process all over again and
3 where are you? You are compounding confusion.

4 MR. BROOKS: Under 11.01(b), even if you adopt
5 the alternative proposal on Page 22, you've still got the
6 same problem you described.

7 MR. CLAGETT: Right now -- I don't want to get
8 away from the immediate question that is before us. Right
9 now, we're dealing with a very narrow question, as I see it,
10 and that is that the creation of the boundaries and the
11 creation of the boundaries only shall rest with the General
12 Assembly. Now, later, we move into other spheres of our
13 problem and I would rather refer those problems to the ap-
14 propriate time rather than getting into them, now, and I
15 think many of the problems we're dealing with now rightfully
16 should have been deferred rather than dealing with them, now.

17 THE CHAIRMAN: Any further questions? The ques-
18 tion arises on the motion whether to substitute for con-
19 sideration by the Commission Section 11.02 in the alterna-
20 tive form appearing on Page 22, rather than Section 11.02
21 in the form appearing on Page 9. A vote aye is a vote in

1 favor of further consideration of the alternate form. I
2 again point out to you that under both forms the question
3 of what further alteration or amendment may be made by one
4 or more or any of the methods referred to in each of the
5 sections is still open. The only question being decided on
6 this motion is whether in the first instance, before a
7 regional government can be established, the Legislature must
8 establish the regions or whether the regions as well as the
9 regional governments can in the first instance be created
10 by the counties or by the voters resident within the region.

11 Are you ready for the question? A vote aye is in
12 favor of the alternate on Page 22. All those in favor,
13 please signify by a show of hands. Contrary? The motion
14 is carried, 11 to 7.

15 We now have before you for consideration Section
16 11.02(a), in the form in which it appears on Page 22. Dr.
17 Bard?

18 DR. BARD: I would like to ask a question. How
19 about the dissolution of regional government?

20 THE CHAIRMAN: I take it, Mr. Clagett, that the
21 dissolution of regional government would be possible,

1 under Section 11.02(b), by the Legislature, is that correct?

2 MR. CLAGETT: It's specifically provided for
3 there.

4 THE CHAIRMAN: Mr. Case?

5 MR. CASE: This is simply a question. When we
6 talk about, upon the creation by the General Assembly of
7 the boundaries of regions, are we talking, now, about multi-
8 county civil divisions?

9 THE CHAIRMAN: I take it that this is what --

10 MR. CLAGETT: Multi-county civil representative
11 regional governments.

12 THE CHAIRMAN: Something a little smaller than
13 civil divisions, but it's still multi-county.

14 MR. CASE: We're talking about what?

15 THE CHAIRMAN: Multi-county regional representa-
16 tive governments.

17 MR. CASE: Can we say that, instead of just
18 regions, so it would be more precise and we'll all know
19 what we're talking about?

20 THE CHAIRMAN: I think what we're talking about
21 here is creation of a region, that is just a geographic

1 area, as distinguished from the government of the region.

2 MR. CASE: But the word region is not used any-
3 where before, you see. That's a completely new word.

4 THE CHAIRMAN: Yes.

5 DR. BARD: On (b), including regional represen-
6 tative governments.

7 MR. CASE: That's what I'm talking about. That's
8 the government, not the area, you see. So, you are wrong.

9 DR. BARD: Oh, I see.

10 MR. CASE: Okay.

11 DR. BARD: I'm conceding only to gain a larger
12 point.

13 MR. CASE: So, it seems to me that the word
14 region ought to be spelled out with some specificity, so
15 we know exactly what we're talking about.

16 THE CHAIRMAN: All we're talking about, as I
17 understand it, is any geographical area of the State.

18 MR. CASE: Of more than one county.

19 THE CHAIRMAN: That's true.

20 MR. SAYRE: Of more than one portion of a
21 county.

1 THE CHAIRMAN: Embracing more than one county.

2 MR. CASE: Now, we've come full circle. Every-
3 body here knows what we're talking about, but when they
4 read this, a reader will never know what we're talking about.

5 THE CHAIRMAN: I think the point is well taken,
6 that the use of the word region here must be tied into the
7 multi-county concept in the other section.

8 MR. CLAGETT: I would say so, and I think we've
9 got a better answer than that and that is we're allowing
10 the General Assembly to determine the boundaries of regions.

11 THE CHAIRMAN: But it still must be multi-county.

12 MR. CLAGETT: And I would have no objection to
13 boundaries of regions which shall be multi-county.

14 MR. SAYRE: Encompassing more than one county.

15 THE CHAIRMAN: May I suggest in the interest of
16 time that we not try to get the precise phraseology, now.
17 You are talking about a multi-county region, is that correct?

18 MR. CLAGETT: Yes. I'm talking about multi-
19 counties constituting a region. You've got too many s's in
20 there. I'm talking about multi-counties constituting a
21 region.

1 THE CHAIRMAN: We're talking about a multi-
2 county region.

3 MR. CLAGETT: Right.

4 MR. CASE: No wonder I couldn't understand it.

5 MRS. FREEDLANDER: Mr. Chairman, as long as we
6 have under Section 11.01(a), definitions of units of local
7 government, it seems to me that somebody on the Style Com-
8 mittee could define what we mean by region or definitions --

9 THE CHAIRMAN: I want to make certain we all
10 understand together the same thing and I take it what we're
11 talking about is the creation by the General Assembly of
12 the boundaries of a multi-county region.

13 DR. BARD: That's right.

14 MR. CASE: Good.

15 MR. CLAGETT: I think we can well include it
16 in that Section 11.01(a).

17 DR. BURDETTE: What do we mean by that? Not
18 that there have to be two counties, but there has to be at
19 least parts of two counties.

20 THE CHAIRMAN: Exactly.

21 MR. CLAGETT: Mr. Chairman, I would like to get

1 one other thing clear. The first word of the alternative
2 section we have before us, I would like to change to after.
3 In other words, instead of upon, it would be the word,
4 after the creation by the General Assembly.

5 THE CHAIRMAN: Is there any objection? Mr.
6 Mindel?

7 MR. MINDEL: I'd like to ask Mr. Clagett, suppose
8 the General Assembly creates a region and no action is
9 taken thereafter on the part of the county. What happens?

10 MR. CLAGETT: Then the petition of the people
11 could do it or the General Assembly could do it.

12 THE CHAIRMAN: But if nothing happens by any one
13 of the three, it just sits?

14 MR. CLAGETT: Then there's no chance for it. It
15 answers itself.

16 MR. CASE: Mr. Chairman, the Chairman amended
17 his own language and I think he's done himself hurt. What
18 I have in mind is sometimes the General Assembly has passed
19 a law contingent upon another law becoming effective and it
20 might well be that they would set up the government and then
21 set up the region, and this would be important because the

1 region might be petitioned to referendum. So, it wouldn't
2 become a law and they would want the government for the
3 region to go into effect immediately after the referendum
4 was approved, if it was approved.

5 We had this very same thing in our intermediate
6 Appellate Court where the legislation, as you know, has been
7 made contingent upon the Constitutional Amendment becoming
8 effective. I think your word upon, Hal, is a better word.

9 THE CHAIRMAN: What you really mean is effective
10 upon.

11 MR. CLAGETT: No, I don't mean that. I don't
12 mean either one. I mean just what I say, namely, that the
13 General Assembly can evolve to the eventual establishment
14 of regional governments through the use of the classifica-
15 tion device and by the trial and error of classification
16 and the division of the State into no more than five separate
17 classes and the employment of that device, eventually move
18 on into the area of the creation of regional governments,
19 which means that you've got to have a cart and a horse and
20 you don't have to put the two of them together at the same
21 time until you want to use them.

1 THE CHAIRMAN: But you do not mean to preclude
2 the Legislature from creating a regional government simul-
3 taneously with the creation of the region.

4 MR. CLAGETT: I don't think that's implicit in
5 the use of the word after.

6 THE CHAIRMAN: That serves to Mr. Case's comment,
7 and I think it's well taken.

8 MR. CLAGETT: I don't think it's necessary.

9 DR. BURDETTE: You mean with and after the crea-
10 tion.

11 MR. CLAGETT: Upon has a degree of mandatory to
12 it which I'm not willing to accept.

13 MR. CASE: I just think it's the wrong word.

14 THE CHAIRMAN: Let me make this suggestion,
15 again without --

16 MR. CLAGETT: On or after.

17 THE CHAIRMAN: Without suggesting that this be
18 the precise language, the thought that you have is that the
19 representative government may be established effective upon
20 the creation of the regions.

21 MR. CLAGETT: That's right.

1 THE CHAIRMAN: Which means either at the same
2 instant or thereafter.

3 MR. CLAGETT: Right. Let me clarify it a little
4 further. Dr. Winslow at one point in discussing this same
5 problem gave as an example that the Legislature could go
6 ahead and create the regions. The government for one of the
7 regions created would be activated and, insofar as the other
8 regions are concerned, there not being the same compelling
9 necessity as those reasons which caused the activation of
10 the government in one might be a matter of years in coming
11 around to developing a structure or form of government for
12 that particular region. I want that to be possible.

13 THE CHAIRMAN: All right. Mr. Sayre?

14 MR. SAYRE: If we have it where we have to wait
15 for the General Assembly to create a region, is there some
16 way in which we could amend this section to make it so
17 that the General Assembly would have to create a region
18 upon the interest expressed by referendum or something in a
19 locality?

20 THE CHAIRMAN: I think that's exactly the same
21 as the question on which the Commission just voted and

1 voted to the contrary, in essence.

2 MR. SAYRE: That we cannot in this way even con-
3 sider a regional government, really, until we've got a
4 region?

5 THE CHAIRMAN: That's the whole point.

6 MR. SAYRE: Then I have another problem, about
7 those five per cent voting for Governor, are we talking
8 about five per cent of the entire State? The way I see it
9 here, that's the way it would work out, because what region
10 are we talking about?

11 MR. CLAGETT: I think the language is clear, Mr.
12 Chairman.

13 MR. SAYRE: The language with the region isn't
14 clear, the way I see it.

15 MR. CASE: Residents of the proposed region.

16 MR. SAYRE: You are talking about the proposed
17 region, number one. Then you are talking about five per
18 cent of those voting for Governor. Maybe I'm wrong, but
19 it seems a little loose.

20 THE CHAIRMAN: I think the whole phrase needs
21 tightening up. I assume you don't mean bearing the names

1 of resident votes? You mean signed by registered voters, do
2 you not?

3 MR. CLAGETT: Well, it says petition and I think
4 you've got to sign it.

5 THE CHAIRMAN: Well, I could present a petition
6 and sign it myself and have on it the names of 10,000
7 registered voters, and I don't think that's what you mean.

8 MR. CLAGETT: You are correct.

9 MR. CASE: You've got to sign them yourself.

10 MR. CLAGETT: If anything other than that be my
11 meaning, you better find another word.

12 THE CHAIRMAN: Again, this is a matter of
13 phraseology, but it seems to me it's a part of the same
14 notion that Mr. Sayre mentioned. Mrs. Freedlander?

15 MRS. FREEDLANDER: Mr. Chairman, the reason why
16 after is preferred to upon, and I'm not speaking for the
17 Committee, I'm just adding to the Chairman's point, is
18 that although the Commission voted down a Constitutional
19 provision for dormant regions, what the intent of this
20 after, the meaning of it is that the Legislature could
21 provide for five regions and they could be dormant, as long

1 as they were prescribed by the Legislature rather than
2 constitutionally. So, that's why after is preferred to
3 upon.

4 THE CHAIRMAN: Mrs. Bothe?

5 MRS. BOTHE: I think this may have been asked at
6 the last meeting, but I don't remember the answer. The way
7 this language reads, I'm not clear whether the Legislature
8 has to district the entire State into regions before any
9 region is subject to the provision or whether it can do it
10 piecemeal.

11 THE CHAIRMAN: I would assume, in view of the
12 question that I asked Mr. Clagett earlier about the re-
13 phrasing of this, that it would be the latter. In other
14 words, that this would be so rephrased that the General
15 Assembly could provide for boundaries of a region, one or
16 more than one.

17 MRS. BOTHE: I think it ought to go to Style on
18 this, but the way it's worded now, I think it could be con-
19 strued to mean that the whole State has to be regionalized
20 before any region can be activated.

21 MR. SCANLAN: I think the provision is a little

1 bit -- it means in point of fact that the local county
2 legislative bodies or the citizens of the county would get
3 very little opportunity to establish or alter a form of one
4 of these regional representative governments, because in
5 point of fact, I agree with what you said, at Port Deposit,
6 if the Legislature is going to create regions, it's going
7 to create the representative governments in those regions
8 and I think there should be some flexibility, if we're going
9 to accept that proposition, as a majority of the Committee
10 that voted, I think we should provide the language which
11 would permit the local areas or the voters of the local
12 area at least to amend or alter the form of the represen-
13 tative government and, finally, in addition to the General
14 Assembly having the power to terminate a regional represen-
15 tative government, I see no reason why the people in the
16 region shouldn't have the power to terminate and to capture
17 that thought, and to put it before the body in a formal
18 motion, I suggest language along the following lines.

19 In Line 3, where it says -- I'm in the addendum,
20 now, 22 -- I'll read the sentence. Upon the creation of
21 the General Assembly of the boundaries of regions,

1 representative governments for the regions may be established,
2 or thereafter altered or terminated, and then the rest of
3 the sentence would remain the same.

4 I have no particular brief for the language.
5 The purpose of the language is to make it clear that the
6 local legislative bodies or the registered voters of those
7 bodies could alter or amend the form of representative
8 government and make it further clear that a regional rep-
9 resentative government could be terminated not only by the
10 General Assembly, but by the concurrent action of the
11 legislative bodies involved in the regional representative
12 government or by the voters.

13 I think this would provide a more flexible and
14 more democratic way of either getting rid of something that
15 proves to be useless or a monster or improving something
16 that the Legislature gave the area in the first instance.
17 Is there a second?

18 MR. SAYRE: Seconded.

19 MR. CLAGETT: Mr. Chairman, I point out to you
20 that actually under Section 11.01(b), and you can pick that
21 up quickest by just looking at the first page, the General

1 Assembly does have the power to change, merge, dissolve and
2 alter. There is no question about that and then further --
3 look at Page 3, Section 11.04, Subsection (c). Any instru-
4 ment of government for a county shall provide for its amend-
5 ment by a majority vote of the voters of the county, et
6 cetera.

7 MR. SCANLAN: This is not a government --

8 MR. CLAGETT: True. There is no reason why
9 actually we couldn't provide for the same thing that is
10 provided on Page 3, in 11.04, Subsection (c), with reference
11 to counties, with reference to regional governments.

12 MR. SCANLAN: That was the purpose of my amend-
13 ment.

14 MR. CLAGETT: I think it would be consistent with
15 what we have done insofar as the counties are concerned.

16 THE CHAIRMAN: Would you, Mr. Scanlan, care to
17 amend your motion to provide instead that Section 11.02 be
18 amended so as to provide, with reference to regional govern-
19 ments, provisions similar to those contained in Section
20 11.04, with reference to county governments?

21 MR. SCANLAN: Yes. I have no brief for the

1 language. That's the idea.

2 THE CHAIRMAN: Would you accept that, Mr. Sayre?

3 MR. SAYRE: Yes.

4 MRS. FREEDLANDER: Mr. Chairman, will we not
5 have to change 11.01(b), then, because some of this will be
6 repetitious?

7 THE CHAIRMAN: No. I take it that 11.01(b) is
8 intended to express the notion that notwithstanding local
9 home rule for counties, regions and so forth, the Legislature
10 nevertheless retains the power to abolish them or to alter
11 them and so forth.

12 MRS. FREEDLANDER: And multi-county civil divi-
13 sions are in that, too.

14 THE CHAIRMAN: That's right.

15 MR. CLAGETT: By that degree of repetition, you
16 are including the petition process which you wouldn't other-
17 wise have in the other two.

18 THE CHAIRMAN: Right. Mr. Haile?

19 MR. HAILE: Mr. Chairman, are we considering
20 now amendments to the alternative sections?

21 THE CHAIRMAN: Yes.

1 MR. HAILE: I would suggest that the third word,
2 which is creation --

3 THE CHAIRMAN: That's a different amendment. We
4 haven't acted on this one yet. Is there any further discus-
5 sion of Mr. Scanlan's motion?

6 DR. BARD: I have a question. Mr. Chairman, does
7 that mean, as I follow 11.04(c), if we're drawing parallel
8 relationships there, that it would be by a majority vote of
9 the voters?

10 THE CHAIRMAN: Of the region.

11 DR. BARD: Voters in the region?

12 THE CHAIRMAN: Yes.

13 DR. BARD: All right.

14 THE CHAIRMAN: Any further discussion? Ready
15 for the question? The question arises on the motion that
16 Section 11.02(a), alternate form, be amended to provide
17 provisions, with reference to a region, provisions similar
18 to Section 11.04 with reference to a county. All those in
19 favor signify by saying aye. Contrary, no? The ayes have
20 it.

21 Now, Mr. Haile?

1 MR. HAILE: What I would consider to be clarify-
2 ing an amendment would be to change the third word from
3 creation to establishment, so it would read, After the es-
4 tablishment by the General Assembly of the boundaries of a
5 multi-county region, representative governments for the
6 region may be created. In other words, transposing those
7 two words, to me, is much clearer.

8 THE CHAIRMAN: Mr. Clagett, do you have any com-
9 ment?

10 MR. CLAGETT: I believe, from the point of view
11 of style, since back over there in 11.01(b), we used the
12 word creation, I'd rather stick to creating and then there
13 is no question about what we mean.

14 THE CHAIRMAN: Well, creating which? Mr. Haile
15 suggests that you create the governments, but establish
16 the boundaries.

17 MR. HAILE: I was going to suggest the same
18 amendment to that 11.01(b).

19 MR. CLAGETT: I think that by -- I do not want
20 to pre-empt the right of the General Assembly to create at
21 one in the same time, if it sees fit to do so --

1 THE CHAIRMAN: His point is merely in the use of
2 the words. He suggests that you create the government, but
3 you establish the boundaries, rather than create the boun-
4 daries and establish the government.

5 MR. CLAGETT: I can't see any distinction be-
6 tween the two, frankly, so I'm not going to press something
7 that I think is synonymous, except that possibly creation
8 has a little bit broader connotation than mere establishment.

9 THE CHAIRMAN: Well, it seems to me for that very
10 reason there is some force in his suggestion.

11 MR. CLAGETT: In making it establish, rather
12 than holding onto the dual -- I will not oppose that.

13 THE CHAIRMAN: Is there any objection to Mr.
14 Haile's suggestion that you transpose the words and say es-
15 tablish in the first line and create or created in the third
16 line? If not, we'll make the change. You suggested that
17 accordingly that change should be made where, Mr. Haile?

18 MR. HAILE: 11.01, the General Assembly may
19 prescribe by law for the establishment and alteration of
20 boundaries of counties, multi-counties, civil divisions.
21 See, counties have already been created. The establishment

1 alteration of boundaries by the General Assembly. In the
2 future, they would have that power without referendum.

3 MR. CLAGETT: I wouldn't want that same distinc-
4 tion to apply to intergovernmental authorities, and crea-
5 tion applies to them as well as multi-county civil divisions,
6 as well as counties.

7 MR. HAILE: Well, this 11.01(b), it says, The
8 General Assembly may establish the boundaries, and then
9 there are alternatives. It repeats it, upon establishment
10 of boundaries by the General Assembly.

11 THE CHAIRMAN: May I suggest we leave the wording
12 to the Committee on Style? They may decide to come up with
13 the present Constitutional phrase and say erection.

14 MR. HAILE: I think it's a question of style.

15 THE CHAIRMAN: Any further question as to 11.02(a)?
16 I take it, Mr. Sayre, the question you raised and the sup-
17 plement to it that I added would be taken care of by the
18 motion to adopt the provisions of 11.04. Dr. Burdette?

19 DR. BURDETTE: I should like to get an interpre-
20 tation of the meaning of may, the second word in the third
21 line, as to whether that runs counter to an earlier

1 provision that these shall be representative governments. I
2 think it's 11.01(b), where it says they may create, but they
3 must be represented. Now, does this may satisfy all the
4 lawyers? I'm talking about 11.02(a).

5 THE CHAIRMAN: I think the answer to it, Dr.
6 Burdette, it would be much better to remove any doubt and
7 could very easily be done if the section is rephrased to
8 follow the pattern of 11.04, by saying, for instance, that
9 the counties may provide for the creation of a regional
10 government which shall be representative in character.

11 DR. BURDETTE: All right. Then I have just one
12 other question and I presume there would be no objection to
13 saying what -- it says acts of the county legislative body.
14 I should think that action of the legislative bodies of the
15 counties therein, although I'm afraid of therein, because
16 they may not be totally therein, but this could be read as
17 all the counties in the State. The second word is concurrent.
18 As I first read it, I thought it had to be concurrent with
19 the Legislature, but I think it's concurrent among them-
20 selves.

21 THE CHAIRMAN: I'd like to ask a question in

1 connection with that. Was it deliberately intended that
2 this be action of the county legislative body as distinguished
3 from a county local law which in effect would be joint
4 action, of the county and the Executive?

5 MR. CLAGETT: I think, to be perfectly frank, I
6 don't think we thought of that distinction. I'm sure I
7 didn't. I was thinking in terms of action by the county
8 legislative bodies and that would be more than one county
9 acting concurrently, but I can't visualize the difference
10 between that and one county acting by law conditioned upon
11 another county at a later date concurring with it and thus
12 comes into existence a course of action.

13 THE CHAIRMAN: Yes, but I don't think that was
14 the point. The question is do you mean to limit it to
15 legislative body? Don't you mean action by the county? It
16 may be by the County Council and the Executive or it may be
17 by the County Commissioners, in a county commissioner
18 government, but not just action by the county legislative
19 body.

20 MR. CLAGETT: I think we meant just the county
21 legislative bodies, because this is primarily within the

1 realm of the legislative action to establish and create
2 governments. It's a basic form of government that should
3 rest with the legislative branch, rather/ to include the
4 Executive.

5 THE CHAIRMAN: You mean it would not be a county
6 law, in other words?

7 MR. CLAGETT: It would not necessarily be a county
8 law. It could be by the concurring action of the county
9 legislative bodies.

10 THE CHAIRMAN: What about county commissioners?

11 MR. CLAGETT: Well, they are still legislative
12 bodies. They happen to be both legislative and executive.
13 I don't think that one would exclude the other.

14 THE CHAIRMAN: Dr. Bard?

15 DR. BARD: What I was just going to suggest,
16 county governing bodies. Then you would include the pos-
17 sibility of either a county council where it exists or the
18 commissioner form of government where the council does not
19 yet exist. The governing body would cover either possibility,
20 wouldn't it?

21 MR. HAILE: No. We have great difficulty if you

1 use governing body, whereas, if you use legislative body,
2 it's clear.

3 DR. BARD: You think that would cover the com-
4 missioners as well?

5 MR. HAILE: Yes.

6 THE CHAIRMAN: I don't understand why it's desired
7 that it not simply be county action, if the charter requires
8 the law to be approved by the county executive --

9 MR. HAILE: The previous phrase refers to the
10 General Assembly. We don't say the State. We say the
11 General Assembly, which is a --

12 THE CHAIRMAN: Is this intended?

13 MR. HAILE: That's what we intend.

14 MR. CLAGETT: Yes, because it's alternative, Mr.
15 Chairman, to the petition approach and we don't mean to
16 consolidate the two.

17 THE CHAIRMAN: But you do not mean action by the
18 General Assembly by law?

19 MR. CLAGETT: No, we do not.

20 MR. HAILE: I thought we meant action by the
21 General Assembly subject to Executive veto, subject to

1 referendum.

2 MR. SAYRE: In fact, we agreed on that.

3 DR. BURDETTE: I thought it was amended, by
4 agreement, by law.

5 MR. SAYRE: Mr. Chairman, I have additional
6 problems --

7 MR. CASE: Let's clear this one first.

8 MR. CLAGETT: Where we did provide the --

9 THE CHAIRMAN: 11.01(b) says the General Assembly
10 may provide by law for the creation, and so forth.

11 DR. BURDETTE: You all agreed it meant by law,
12 and I was arguing that we put it in and it was left in there.

13 THE CHAIRMAN: You don't intend something dif-
14 ferent in 11.02(a), now?

15 MR. CLAGETT: Frankly, I think we intended it,
16 but the advisability of the intent is the question. Mr.
17 Brooks, would you like to answer that?

18 MR. BROOKS: I think you are right in your state-
19 ment that this was just a substitute for what is ultimately
20 the third alternative which is the petitioning process,
21 that this is altogether representative of the will of the

1 people without any executive responsibility all the way
2 along the line in the creation of these governments.

3 THE CHAIRMAN: Mr. Sayre?

4 MR. SAYRE: Let's see if I understand this cor-
5 rectly. The way this reads, you have three levels of going
6 about this. Suppose that you say you can take action by
7 whatever method a county wishes to go about. So, one
8 county council submits it to referendum and the county com-
9 missioners in the other place, by ordinance or whatever
10 they say we agree and the two of them get together by which-
11 ever way they will do it. Isn't that acceptable?

12 MR. CLAGETT: We're talking about an initiating
13 process here and in order to have a degree of flexibility
14 insofar as the initiation is concerned, that is, the
15 starting of the movement, we were thinking in terms of
16 three distinct alternative methods and, by use of county
17 legislative bodies, we classified that that would be an
18 alternative approach.

19 By use of the petition approach, you had a
20 second distinct alternative approach. Changing that in the
21 manner we are now discussing would be to consolidate the

1 two approaches in some degree, it seems to me, because if
2 by law you required it to be, insofar as the counties are
3 concerned, then it must be approved by the referendum pro-
4 cedure of the people and you then have a blurring of your
5 lines of distinction with reference to alternative choice,
6 it seems to me.

7 MR. SAYRE: You wish to tie it down?

8 MR. CLAGETT: And we wish to tie it down to al-
9 ternative choice and on the initiation or possibly by
10 initiation of the concurring action of county legislative
11 bodies.

12 THE CHAIRMAN: It seems to me the notion is not con-
13 sistent with other actions we've taken where, not uniformly,
14 but almost uniformly we've shied away from action of the
15 General Assembly that is not a law and required action of
16 the General Assembly to be in the form of law. It seems to
17 me you have many undesirable consequences if you depart from
18 that.

19 MR. CLAGETT: I believe that, too, and that's
20 why I say the advisability of what we put in here might be
21 a matter to be decided on.

1 MR. CASE: Just to bring it to a head, I would
2 move that 11.02(a), found on Page 22, be amended to provide
3 that the action of the General Assembly therein stated shall
4 be by law and also to provide that the concurrent action of
5 the counties shall be by law.

6 MR. MARTINEAU: I second it.

7 THE CHAIRMAN: Any discussion? Any further
8 comment, Mr. Clagett?

9 MR. CLAGETT: Again, this is putting me in the
10 realm of personal expression. I believe, personally, I
11 would prefer the by law procedure, but I believe that the
12 consensus of the Committee would be contrary to that.

13 THE CHAIRMAN: Any further discussion? The ques-
14 tion arises on the motion to amend Section 11.02(a) which
15 would provide that the action of the General Assembly shall
16 be by law and that the concurrent action of the counties
17 shall be by law. All those in favor please signify by a
18 show of hands. Contrary? None. It's approved unanimously.

19 Any further comment or question as to Section
20 11.02(a)?

21 MR. MARTINEAU: Did we ever clear up Mr. Sayre's

1 question as to what five per cent we were talking about?

2 THE CHAIRMAN: It's intended to be five per cent
3 of those voting for Governor in resident in the region and
4 the language is to be rephrased accordingly.

5 If not, let's move forward then to consideration
6 of 11.02(b), on Page 9.

7 MR. CLAGETT: Here we're dealing with the powers
8 of the regional governments. Once the boundaries have been
9 established and the structure is being devised, and it was
10 thought here that there ought to be a clarification of how
11 the powers would flow into the regional governments and we
12 have provided or we have thought and recommend that a
13 specific provision should be included in the Constitution
14 to avoid a vacuum which would exist without such an express
15 provision and, accordingly, we have recommended several
16 alternative ways.

17 One, by the governing bodies of all counties
18 within or partly within the region; two, by the General
19 Assembly enacting a public law withdrawing powers from the
20 county within or partly within the region, and three, by
21 the delegation of powers of the State.

1 THE CHAIRMAN: But not by powers in a charter
2 adopted by the people?

3 MR. CLAGETT: Well, they are still going to have
4 to draw the powers from some one source and, rather than
5 having the region come up with a charter which would run
6 contrary and in conflict with the counties composing that
7 region, I believe the answer would be no.

8 THE CHAIRMAN: So that the county would, in ef-
9 fect, or the General Assembly, have a veto over the powers
10 given to the region. Judge Adkins?

11 JUDGE ADKINS: Mr. Chairman, in order to pro-
12 voke some discussion, I would like to propose a rather radi-
13 cal amendment to Paragraph (b), which would be to substi-
14 tute language similar to the following in lieu of the lan-
15 guage of Paragraph (b):

16 After the establishment of such regional govern-
17 ments, all governmental powers exercised by other local
18 governmental bodies within the region shall be exclusively
19 exercised by said regional governments.

20 MR. CASE: I second it.

21 JUDGE ADKINS: I'd like to speak briefly on it.

1 THE CHAIRMAN: It's seconded. Go ahead.

2 JUDGE ADKINS: It seems to me we're creating a
3 solution here which doesn't really solve the problem its
4 attempting to solve. As I understand it, the most per-
5 suasive argument for the creation of a regional government
6 is to prevent proliferation of authorities and intergovern-
7 mental compacts of one kind or another. If, however, we
8 create a regional government having less than all the
9 governmental powers within the area, we're doing nothing
10 more than, it seems to me, creating a hydraheaded govern-
11 mental section which is made up of not two proliferation
12 possibilities, but three. You have local governments,
13 regional governments and the then existing intergovernmental
14 compacts.

15 If you are to have a regional government, it makes
16 sense to me that that government should replace the local
17 government. If you are not going to have a regional govern-
18 ment which does not replace the local, then it makes sense
19 to me to do ^{so} by the interchange of powers and intergovern-
20 mental compacts. I can't, in my own thinking, see a place
21 for a regional government having less than all the powers

1 of the local governments within the area served by the
2 region.

3 It doesn't seem to me that you aid the problem
4 by creating and placing on the burden of the taxpayer, if
5 I want to wave the flag, a third overhead structure which
6 will, in accordance with these provisions, operate within
7 a limited area. For that reason, I think, if you have it,
8 it should do the whole job. If it isn't going to do the
9 whole job, I don't think you ought to have it. That's the
10 reason for my motion.

11 THE CHAIRMAN: Would you, before we have further
12 discussion, give us again the suggested language a little
13 more slowly?

14 JUDGE ADKINS: With the caveat, this language is
15 suggestive, after the establishment of such regional govern-
16 ment, all governmental powers exercised by all other local
17 governmental bodies within the region shall be exclusively
18 exercised by said regional government.

19 MR. HOFF: Does that include municipalities,
20 also?

21 MR. MILLER: Would that apply to municipal

1 corporations?

2 JUDGE ADKINS: Maybe it would have to be quali-
3 fied to eliminate them.

4 THE CHAIRMAN: Give me the terms again. All
5 local government powers, what?

6 JUDGE ADKINS: Exercised by other local govern-
7 mental bodies within the region shall be exclusively exer-
8 cised by said regional government.

9 MR. MILLER: A question.

10 THE CHAIRMAN: Mr. Miller?

11 MR. MILLER: Would that do away with any
12 municipal government within the region?

13 JUDGE ADKINS: I think it would, but it was not
14 intended to. For that reason, the language would have to be
15 refined. I said I was proposing language to get the idea,
16 not the precise content.

17 MR. MILLER: It just affects --

18 DR. BURDETTE: Is it the intent of the mover, al-
19 so to place in the regional government all of the adminis-
20 tration of records of land titles?

21 JUDGE ADKINS: To the extent that they are not

1 now in most counties within the confines of the local
2 governmental unit. They are within the confines of the
3 court system, but in areas where they are, they would then
4 be subject to the regional government.

5 THE CHAIRMAN: Mrs. Bothe?

6 MRS. BOTHE: Would this abrogate all governmental
7 authorities?

8 JUDGE ADKINS: I would think so.

9 MR. DELLA: Do I gather that it would take over
10 all regional governments?

11 JUDGE ADKINS: If the regional governments were
12 established, let's say, Baltimore County, Anne Arundel and
13 Prince Georges, then the regional government would be the
14 local governing body within that area, instead of having
15 the local authorities in the pre-existing counties. It
16 would be one governmental unit responsible for the solution
17 of the local problems of governments within the region.

18 MR. DELLA: I could see no problem taking in the
19 counties, as such, but I could see a lot of confusion if
20 you are going to try to incorporate the regional government
21 jurisdiction into the the municipalities.

1 JUDGE ADKINS: I think we might exclude municipi-
2 palities, and I don't think this would answer your question,
3 because as I understand, Baltimore City is classified here
4 not as a municipality, but a county.

5 THE CHAIRMAN: Mr. Gentry?

6 MR. GENTRY: Mr. Clagett, counties will have
7 powers not denied by charter or general law. Can the
8 General Assembly delegate powers identical to a county to
9 a regional government?

10 MR. CLAGETT: By general law they can utilize
11 the classification procedure and where the law applies to
12 all counties within a classification or to all counties
13 within the State, the answer is yes, they could do so.

14 MR. GENTRY: But, in setting up a particular
15 regional government, just one, they could give that regional
16 government identical powers?

17 MR. CLAGETT: By withdrawal, yes, provided it
18 met the criteria of the general law and that's why you've
19 got to have the provision as we provide later for classifica-
20 tion by population or other criteria, so that you can make
21 use of the general law within the definition as we made it

1 here apply to the establishment of regional governments.

2 THE CHAIRMAN: Dr. Bard?

3 DR. BARD: It seems to me that the intent of the
4 motion is to help those who believe that there ought to be
5 a number of choices and alternatives, to defeat the very
6 purpose which we intend. The whole concept of setting up
7 regional governments side by side with other possibilities
8 was to prepare us for transition periods which are likely
9 to last for 25, 50 or more years.

10 The way the motion reads, the concept is to ab-
11 sorb. Now, we all realize that this is the very fear which
12 many people in Maryland have and, if we set this forth,
13 it's perfectly understandable that this is the kiss of death.

14 MR. SCANLAN: That's its purpose.

15 DR. BARD: Well, I'm just putting it in the
16 minutes.

17 MR. HOFF: I think his Honor is using the old
18 legislative gimmick of sweetening this to the point of
19 palatability and, although this may be his desire, I think
20 it departs from the results we're trying to arrive at here
21 today.

1 JUDGE ADKINS: That's a point of personal
2 privilege.

3 THE CHAIRMAN: Mr. Case?

4 MR. CASE: Well, I seconded the motion and since
5 Stan Hoff used the word his Honor, I know he couldn't be
6 talking about me.

7 MR. HOFF: You are just honorable.

8 MR. CASE: I understand all that, so I'd like
9 to speak to what he said. Before the luncheon recess, I
10 voiced a genuine concern about the increasing number of
11 regional authorities and governments that could take over in
12 a given area and I spoke of Hyattsville, Maryland, where I
13 said there would be four, but actually, upon further reflec-
14 tion and counting the Washington Suburban Commission, there
15 actually would be five agencies bearing on the small home
16 owner or earner in one community, and they would have the
17 chance to elect under this program four sets of officials,
18 one for the State, the House of Delegates, one for the
19 county and one to the town council and one to the regional
20 council; I suppose there would be a council.

21 So, if the ballot was confused this last election,

1 wait until you get regional elections. But I think inherent
2 in Judge Adkins' motion is this. If the need does come, as
3 has been explained by Mr. Eney today, to have the regional
4 government, then let's go all the way and give it true
5 status as a government, transfer the powers in that particu-
6 lar area which the counties might have had to it and let's
7 set it up really for what it is and let it cope with the
8 problems it has to cope with with the greatest amount of
9 power you can give it.

10 It seems to me it's either fish or foul. If it's
11 a government and not an authority, let's make it a govern-
12 ment. If this is done, it will by the same token reduce
13 the proliferation of government agencies operating in the
14 area and strengthen the hands of the very agency that you
15 wish to create to solve your problem. So, it seems to me
16 that anything less than this is a compromise with the
17 principle you are trying to enunciate here.

18 THE CHAIRMAN: Mr. Sayre?

19 MR. SAYRE: Number one, a regional government
20 as we have discussed it today is merely maybe a multi-pur-
21 pose authority that has responsiveness to the people and

1 accountability to the people, which most authorities are
2 unable to render. It has delegated powers, regardless of
3 whether it comes from above or from below and that's all
4 we're talking about and I think that we have to walk before
5 we can run and I think you would agree with that. We can
6 only say we're delegating certain functions on an area wide
7 basis to a region and we're calling it a government because
8 it's responsive and accountable to the people. Now, that's
9 all we mean.

10 Now, let's go backwards. It's a lot easier to
11 make smaller units out of larger units than to re-consoli-
12 date and, as Louis Goldstein loves to talk about the develop-
13 ment of this State where we had just a few counties and we
14 made more, we made five counties out of two counties on the
15 Eastern Shore. We split Montgomery from Prince Georges.
16 It's going to be a lot harder to get them back together
17 again as one entity than it would be to delegate certain
18 functions that they both have an interest in to a regional
19 government.

20 Another thing that is really your bailiwick,
21 that we have good governments in solvent areas where they

1 could have rationalization of their tax impact, maybe more
2 by general obligation bonds and revenue bonds which issue
3 would be less expensive, and we aren't going to have that
4 from authorities. It would seem to me we have to simply
5 allow for what takes its course, for regional governments.

6 THE CHAIRMAN: Mr. Miller?

7 MR. MILLER: Isn't it also already in the Consti-
8 tution, if you wanted such a government, first of all, it's
9 got to be approved by the Legislature as a region and,
10 secondly, if the Legislature wants to, it could take all
11 that and make one county of it?

12 MR. SAYRE: That's correct.

13 MR. MILLER: Which would accomplish all that this
14 motion would accomplish, and with a little more clarity be-
15 cause we know about the municipalities.

16 What we're really talking about is something
17 that's in between and we apparently want something in between.

18 MR. SAYRE: I would say yes.

19 THE CHAIRMAN: Any further discussion? Mr.
20 Brooks?

21 MR. BROOKS: I think the motion as it's made

1 really re-establishes for the group to consider the very
2 question that was considered at the Brown Estate. The mo-
3 tion in its effect doesn't establish anything that is not
4 already in this very provision. As Congressman Miller just
5 mentioned, under the alternative which is one of the three
6 alternatives for establishing regional governments, you can
7 do so by the merger of the counties and this has been per-
8 haps expedited, if at all possible, because of the elimina-
9 tion of a requirement for ratification by such merger of
10 the residents of the county, but if a county is merged with
11 a separate county, then you do, in fact, have this new
12 political subdivision completely displacing those that were
13 there formerly in the nature of the counties.

14 So, that the whole purpose of 11.02 was to estab-
15 lish a third alternative, so that the effect of the present
16 motion would be to destroy that alternative and to merge it
17 with the alternative of creating a larger county. So that
18 the question considered at the Brown Estate was should there
19 be a second alternative and that was voted on as a single
20 question and was a favorable vote. So, the effect of this
21 motion would be exactly to the contrary, to eliminate the

1 alternative of what is probably, rather than a lump sum
2 jump to the kind of government that may ultimately be
3 desirable as a recognition that the creation of a larger
4 government is something which has to take place in stages
5 and through growth rather than something to be created over-
6 night.

7 So that perhaps it's not practical to create a
8 regional government as a full-fledged regional government
9 overnight, even if for some purposes it's desirable. Cer-
10 tainly, politically, it's not. On the other hand, the
11 creation of some in between functional governments for
12 authorities would solve some of the pressing problems of
13 the time and permit the development of the State in which-
14 ever direction it might go, whether it be to larger local
15 government units or smaller local government units, but it
16 is in recognition that there will be a long period before
17 you are really able to alter the counties which are based
18 on historical precedents appreciably enough to permit any
19 kind of reasonable government formation to solve many of the
20 problems that exist in the Washington Metropolitan D.C. and
21 Baltimore area.

1 THE CHAIRMAN: Mr. Clagett?

2 MR. CLAGETT: Mr. Chairman, personally, I rather
3 like the motion, but I am not going to vote in favor of it
4 because I don't think it goes far enough. If it was going
5 to mean that the General Assembly would get down to the
6 task of abolishing all counties and creating new counties
7 consisting of, instead of 24, five or six, then I would go
8 along with it, because it's a clean sweep approach and it
9 would solve many, many problems of government that we have
10 to deal with now; but the piecemeal method I don't believe
11 would be quite acceptable.

12 I'm persuaded by just what was said a moment ago,
13 also, that Subsection (b) as written now in the present
14 Seventh Report would permit the very same thing to be accom-
15 plished if the advisability was such and the demand was
16 such that the General Assembly wanted to do so.

17 THE CHAIRMAN: Any further discussion?

18 MR. CLAGETT: Or the counties wanted to do so or
19 the people wanted to do so.

20 DR. BARD: I was going to say I'm going to vote
21 against it because it goes too far in order to keep us from

1 going far enough.

2 THE CHAIRMAN: Any further discussion? I would
3 like to state my own views just briefly. I am fully in ac-
4 cord with the concerns expressed by Mr. Case. I think they
5 are very real concerns, but I don't think that the solution
6 here is any solution.. I think all we do is to put the
7 Legislature and the people in a straight jacket by taking
8 away completely any power of providing a solution to the
9 many problems other than by consolidation of counties, and
10 I think our experience in recent years indicates that we
11 must have as much flexibility as we can.

12 I think the problems that are present, financial
13 problems, are problems which can be resolved by the
14 Legislature and by the legislative bodies of the partici-
15 pating counties in any region. Judge Adkins?

16 JUDGE ADKINS: First of all, I did not make the
17 motion in an attempt to kill the concept of regional govern-
18 ment, despite the rather sinister motives that have been at-
19 tributed to me. I do see a real place for regional govern-
20 ments in Maryland local governmental demands. They may in-
21 deed be fast upon us. I do not think there is a demand for

1 another interlarding of governmental action which can only
2 serve, in my own observation, to create more confusion, if
3 you have another body imposed in part on top and in part
4 equal and in part way out in left field within the existing
5 governmental structure.

6 I do not agree with Congressman Miller or with
7 Mr. Brooks that this is the same solution to the problem
8 that is offered by the merging or combining of counties. To
9 begin with, this avoids the psychological impact that is
10 created by trying to do away with the historic county his-
11 tories and county lines and county affiliations. That is
12 not involved in this proposal. It would not arouse the
13 opposition in that fashion. All the other representations
14 in the General Assembly and so forth that are tied to
15 existing county structures now and probably would continue
16 to be tied, would not be affected by the regional governments
17 proposed here.

18 I can see I'm not going to win this vote, but we
19 have had discussion on the issue. I do think this is the
20 way it should go.

21 THE CHAIRMAN: The question arises on the motion

1 to amend the section to provide that in the establishment
2 of regional governments, all governmental powers exercised
3 by other local governmental bodies except municipal cor-
4 porations within the region shall be exclusively exercised
5 by the regional government.

6 A vote aye is a vote in favor or that proposition.
7 All those in favor please signify by a show of hands.
8 Contrary? The motion is lost 3 to 17. Any further con-
9 sideration of Section (b)?

10 (There was a short recess.)

11 THE CHAIRMAN: Can we come to order, please. Mr.
12 Martineau, you had the floor.

13 MR. MARTINEAU: The question I was raising,
14 apparently there's an oversight here. I had understood from
15 our previous votes that regional governments were to have
16 the power to impose taxes. That is not provided for in the
17 last sentence of 11.02(b), and I question whether that was
18 an oversight. It was thought that was the reason we made
19 these representative governments, so they could invoke
20 taxes.

21 MR. CLAGETT: Let me clarify what I think Mr.

1 Martineau has picked up there. If you will refer to Sub-
2 section (c) of 11.02, which appears just under that last
3 sentence he is referring to, you will see that the Committee
4 has done what the Commission told it to do and that was to
5 give to the intergovernmental authorities the power to im-
6 pose and collect revenues and to borrow money, but only to
7 collect those taxes imposed by the General Assembly or rep-
8 resentative governments. It would have the power of collec-
9 tion, not the power of imposition.

10 Now, as the last sentence appears in Subsection
11 (b), we have carried through apparently with that language
12 the same idea. The question is do we want to limit the
13 regional governments to the power of collecting taxes or do
14 we want to give them the power to impose and collect taxes.

15 THE CHAIRMAN: That's the whole point of the
16 regional governments, was that they should have the power
17 to impose taxes.

18 MR. CLAGETT: I think that's what we intended to
19 do, but we omitted doing that.

20 THE CHAIRMAN: Wouldn't it be very simple to
21 cover the whole thing by adding a phrase after the word

1 power in the first line, powers, including the power to
2 levy taxes or whatever the appropriate language might be?

3 MR. CLAGETT: You mean after the --

4 THE CHAIRMAN: After the word powers, the very
5 first word of (b), including the power to tax or impose
6 taxes, whatever the proper phrase might be.

7 MR. BROOKS: We might just combine the whole thing
8 under (c).

9 MRS. FREEDLANDER: Yes, put it all under (c).

10 MR. CLAGETT: No, I don't think so. I think we
11 better keep those separate because we're dealing with inter-
12 governmental authorities here and there is a distinction,
13 because the Commission, as I understood it, with reference
14 to the intergovernmental authorities, since they were not
15 representative, they were not elected, wanted a distinction
16 made and I believe it was Mr. Case who said -- no, Judge
17 Adkins raised that point and the Committee is in agreement
18 with that restriction upon their authority.

19 THE CHAIRMAN: All right, can we leave to the
20 Committee on Style the precise language, but say that you
21 will insert appropriate language after the word powers to

1 make it clear that it includes the power to tax and borrow
2 money and so forth.

3 MR. CLAGETT: Yes, sir, I think that's satis-
4 factory.

5 THE CHAIRMAN: Dr. Bard?

6 DR. BARD: Would that power include the power to
7 absorb or take over some of the debts of the local govern-
8 ments as they surrendered some of their activities and
9 property?

10 THE CHAIRMAN: I would think so.

11 DR. BARD: Is it clear? If it is, then that
12 satisfies me. What I have in mind is as follows. Suppose,
13 let us say, Baltimore City were to combine in a regional
14 government and absorbed within that were a goodly number of
15 the sewerage resources and water resources which it now owns.
16 If there were some bonds which were still out in this con-
17 nection or, for that matter, the total value of all of
18 this property would need to somehow or other be cleared up
19 with the City itself. Would they have that power?

20 THE CHAIRMAN: I think you've touched there on a
21 problem that is not very clear under this language and one

1 which has concerned some people, that is, whether the
2 creation of a regional government should carry with it the
3 power to take over existing utilities or properties within
4 the region.

5 I would assume that they could not do so without
6 compensation. There is certainly nothing expressed in this
7 section dealing with that subject. Mr. Clagett, did your
8 Committee have any comment on that part of the problem, in
9 particular?

10 MR. CLAGETT: I think you've got several factors
11 involved there. I don't think you can abrogate a contract
12 and I think elsewhere in the Constitution we've taken care
13 of compensation upon use of the condemnation power.

14 THE CHAIRMAN: That refers to private property,
15 though. This would not be private property.

16 MR. CLAGETT: And the Committee has dealt with
17 this in somewhat of a different approach and that is where,
18 let us say, the assets of a county are being taken over or
19 the assets of a city are being taken over on dissolution of
20 that city by its consent or by general law, whether or not
21 compensation should be provided.

1 Mrs. Kostritsky raised the point in that there
2 has been a court decision and a fairly recent one, Baltimore
3 versus State, I don't know how recent, but in any event,
4 sometime back, where there was actually a taking over of
5 public assets by one unit and the Court held that you were --
6 and dealing with the question of compensation -- to whom
7 would the compensation be paid. After all, what is being
8 done is for a public purpose and where a public property
9 is being taken over by another public property, where is
10 there any necessity, and they found there was no necessity
11 to make compensation.

12 Well, this thing gets into focus in that, as
13 Mrs. Kostritsky pointed out, there is an investment by the
14 City in many, many different areas and possibly they
15 wouldn't want to lose the hundreds of millions of dollars
16 that have been invested in physical improvements of one
17 kind or another. So, I think that actually the only answer
18 that I can give is that since we are creating new govern-
19 ments through responsible sources, namely, the action of
20 the General Assembly or by action of the concurring legis-
21 lative councils or by petition, that there is no specific

1 provision for compensation made here. It would have to be
2 upon the wise discretion and sound wisdom of the creating
3 body.

4 THE CHAIRMAN: Mr. Della?

5 MR. DELLA: Mr. Chairman, it seems to me these
6 factors would have to be determined at the time the
7 regional government is established and the method in which
8 the establishment is going to be made. If it's going to
9 be a merger of a couple of counties or subdivision, they
10 would naturally assume all the liabilities and assets that
11 those particular counties would be involved in, because it
12 would be under one government as such. If you are going to
13 establish a regional government and still have certain local
14 governments in effect, these things would have to be taken
15 into effect through negotiating or whatever they are going
16 to do. Setting up the regional government would determine
17 where they are going to get their assets or operations of
18 the government from.

19 I don't see how you can legislate or put in the
20 Constitution certain guide lines they have to follow when
21 the conditions may alter those guide lines to the point

1 where they would not be able to operate if they had to fol-
2 low them.

3 MR. CLAGETT: Mr. Chairman, I found my notes and
4 I believe where I made my notes on this point, I made a
5 little bit more of a concise digestion than I did a few
6 moments ago. Number one, the use would still be public and
7 for the use and benefit of the public. Two, it is a matter
8 of public policy, including right and desirability of com-
9 pensation, and three, it is a matter for statute, not con-
10 stitutional writing; four, it would be a restriction to try
11 to include it here upon the legislative prerogative, and
12 five -- would not apply.

13 THE CHAIRMAN: What was number two?

14 MR. CLAGETT: Well, my five applied only to
15 counties rather than -- my two was, it is a matter of public
16 policy, including the right and desirability of compensation
17 and to whom.

18 THE CHAIRMAN: Mr. Scanlan?

19 MR. SCANLAN: In all these cases where, for in-
20 stance, you are joining a line with two counties, it would
21 be a settlement provision. I suppose it would be an assessed

1 evaluation of the lines of one county and assessed evaluation
2 of the lines of the other. I suppose the Legislature would
3 in the formula or statute which provides for the creation
4 of a unit provide a set off in some way for the second
5 county that had the more valuable property to be compen-
6 sated in some way.

7 I don't see how this could be handled now.

8 THE CHAIRMAN: Any further discussion of this
9 question raised by Dr. Bard?

10 DR. BARD: I don't think it's settled.

11 THE CHAIRMAN: No, I don't think it is, except
12 to the extent that Mr. Claggett has indicated, that, as I
13 understand his comments, the feeling of the Committee that
14 it's not a question that could be resolved in the Constitu-
15 tion. The resolution would depend upon too many factors
16 that would have to be dependent upon each particular case
17 and it would be the utilization of properties for public
18 use and, therefore, a legislative question, as I understand
19 it, as to whether its utilization is for public use.

20 This does not reach the question that Dr. Jenkins
21 raised several meetings ago, that a county or Baltimore City

1 could lose a substantial part of its tax base by a transfer
2 of properties, private properties within a certain area.
3 That's not the question you are talking about now.

4 DR. BARD: No, sir.

5 THE CHAIRMAN: You are talking about purely pub-
6 lic properties.

7 DR. BARD: Public properties.

8 THE CHAIRMAN: Any further discussion of this
9 question? If not -- Mrs. Bothe?

10 MRS. BOTHE: I was just up with a query. In
11 reading this provision that the General Assembly might enact
12 laws withdrawing specified powers from all counties, I
13 gather that is something to compromise in the direction of
14 Judge Adkins' measure, but I wonder if it isn't in conflict
15 with Section 11.03, which precludes the General Assembly
16 from passing laws which don't apply to all counties in a
17 class.

18 MR. BROOKS: You still would have to do it by
19 classification, if it doesn't apply to all counties.

20 MRS. BOTHE: Suppose they wanted to pass a law
21 to take powers away from all counties going into one region.

1 but not necessarily are all part of one class? This could
2 be a likelihood.

3 THE CHAIRMAN: They would have to do it by --

4 MRS. BOTHE: The two provisions would be in
5 conflict.

6 THE CHAIRMAN: Not necessarily. They would
7 have to do it by having that region as a class or making
8 the law applicable to all regions or counties within the
9 class.

10 MRS. BOTHE: I wonder if that's desirable? It
11 might be that the General Assembly wants to take all the
12 governing powers away from certain counties in a certain
13 region, but not others.

14 THE CHAIRMAN: This is the concept that the
15 Committee puts up, that the powers of local government are
16 in the counties and it can't be taken away from the counties
17 except by public general law.

18 MRS. BOTHE: Applicable to all counties in the
19 class?

20 THE CHAIRMAN: And applicable alike to all re-
21 gions in a class.

1 MR. BROOKS: And this alternative that you sug-
2 gest is the alternative which was presented in the Staff
3 memorandum at the Brown Estate which was voted on and de-
4 feated, but that was the alternative you are discussing
5 now, which would have permitted powers to be taken away
6 from counties other than in the classification system and
7 given to the counties in the regional government.

8 MRS. BOTHE: I don't think we discussed it in
9 this context, but I think in the case of setting up regions,
10 as opposed to other areas where there might be a uniform
11 classification, that in that instance, I think the Legis-
12 lature should be able to make particular withdrawals of
13 power of counties in particular regions without reference
14 to their classifications.

15 THE CHAIRMAN: Mr. Martineau?

16 MR. MARTINEAU: I would just like to say I agree
17 with that. I was going to raise that problem when we got
18 to 11.03(c). It seems to me that this necessarily has to
19 be an exception to the section with reference to public
20 local laws. Otherwise, you are going to be in a terrible
21 situation if you've got to -- if you've taken away the

1 power over, say police authority, if you want to set up a
2 regional government that's going to have police authority
3 in Baltimore, in the Baltimore Metropolitan Area, I don't
4 see how you can draft legislation affecting all of the
5 counties in the classes -- all of the classes of counties
6 which are going to be included in this area on any reasonable
7 basis, because if you want to do it in the Baltimore area,
8 it doesn't mean you want to do it in the Washington area,
9 and yet you are bound to have counties that are going to be
10 in the same classes. I think you've got to have an excep-
11 tion here.

12 THE CHAIRMAN: No, I think your question -- and
13 this is the point that was the subject of the discussion
14 at the earlier meeting. You are not depriving anybody from
15 the power to make such a law. You are simply saying the
16 General Assembly doesn't have the power. The participating
17 counties have it. And this is consistent with the whole
18 concept presented by the Committee, that the General As-
19 sembly does not have the power of local legislation except
20 within the classifications of counties.

21 This is, I think, precisely the question that

1 was raised by the Staff and discussed at the Brown Estate.
2 One of the suggestions made was that if you did not have
3 this restriction, you could permit the Legislature to de-
4 feat the whole idea of the necessity for classification
5 simply by creating a region. This is one of the objections.
6 I don't recall who made it, but somebody made the point
7 at the time this was discussed.

8 MRS. BOTHE: I recall the discussion now, Mr.
9 Eney, but I still feel that there should be or there has to
10 be an exception where a power is being taken from a county
11 for the purpose of implementing regional government and I
12 think that there is a distinction there between the concept
13 the Committee is trying to advocate, which is that the
14 General Assembly shall not pass local legislation. I think
15 there would have to be an exception or you are going to
16 have the process of effective regional government vastly
17 hobbled.

18 You are not going to be able to take the powers
19 existing from the counties, unless you do it to all the
20 counties in the classification and, of course, there are
21 going to be counties you don't want to do it.

1 THE CHAIRMAN: Or unless the counties agree.

2 MRS. BOTHE: No. The way I would understand
3 this proposal, that the Legislature would be absolutely
4 restricted from taking powers from one county that it
5 doesn't take from all other counties in the classification,
6 regardless of the purpose.

7 THE CHAIRMAN: But the participating counties
8 could surrender those powers.

9 MRS. BOTHE: But the purpose is to promote
10 regional government or to enforce regional government. I
11 think there should be an exception and only in that instance.

12 THE CHAIRMAN: Let me get at it this way. I
13 think the question was considered before. There is no
14 reason why it can't be reconsidered, if you or Mr.
15 Martineau want to make a motion or if the Commission wants
16 to. Do you want to move that it be reconsidered?

17 MRS. BOTHE: Yes, but if it's a matter of recon-
18 sideration, perhaps it ought to be moved under our discus-
19 sion of 11.03, because that's where the amendment would go.

20 THE CHAIRMAN: All right. Let's wait until we
21 come to --

1 MR. CLAGETT: Before you leave that entirely, I
2 would like to point out that now you are worried about what
3 the General Assembly will do rather than the General
4 Assembly not doing.

5 THE CHAIRMAN: Dr. Burdette?

6 DR. BURDETTE: This involves, in (b), refers
7 to the General Assembly withdrawing specified powers. Can
8 they reinstate them? Suppose they created a regional govern-
9 ment, withdraw powers from the counties and they decided
10 on experience that one of them should not have been given
11 to the regional government. Could they, under this, return
12 it to the county?

13 THE CHAIRMAN: Mr. Clagett?

14 MR. CLAGETT: I would say that the answer to that
15 would be yes, if it met with qualification of a general law.

16 DR. BURDETTE: Why not word it in some such way --

17 MR. CLAGETT: And there would be no problem, of
18 course, if it was done through the consenting power of the
19 region or by consent of the region.

20 DR. BURDETTE: That's perfectly clear, but would
21 it not be wise, instead of saying withdraw, saying an act

1 of the General Assembly with reference to the powers of all
2 counties within or partly within a region?

3 THE CHAIRMAN: It is intended, is it, Mr.
4 Clagett, that the action of the General Assembly be a con-
5 tinuing action or the right of action be continuing, that
6 is, that the General Assembly could from time to time with-
7 draw from counties and grant to regions or withdraw from
8 regions and give back to counties any of these powers?

9 MR. CLAGETT: Yes, it is.

10 THE CHAIRMAN: Then I would suggest it be re-
11 phrased to carry out that purpose.

12 MR. SAYRE: Now, I'm confused a little. This re-
13 lates --

14 MRS. BOTHE: No.

15 MR. SAYRE: It does not relate to your question?

16 MRS. BOTHE: No.

17 MR. SAYRE: All right.

18 MRS. FREEDLANDER: Isn't it the inherent power
19 of any legislative body to repeal laws as well as to pass
20 laws?

21 THE CHAIRMAN: I don't think that quite answers

1 the question because this has to be read in connection with
2 the other sections. I don't know what change, if any, is
3 necessary. I'm simply trying at this point to get the in-
4 tent of the Committee clear and then leave it to the Com-
5 mittee on Style. Any further questions as to (b)? If not,
6 we'll move on, retaining the right to come back to (b), in
7 connection with the consideration of 11.03, when we come to
8 that point.

9 Paragraph (c).

10 MR. CLAGETT: Subsection (c) carries out what
11 the Commission directed the Committee to do and that is
12 where it provided for the granting to intergovernmental
13 authorities the power to impose and collect revenues and
14 borrow money, that it not have the power to impose taxes,
15 but merely to collect taxes.

16 THE CHAIRMAN: There was a difference in the
17 other section, as I remember it. Didn't it say the power
18 to collect taxes imposed by representative bodies?

19 MR. CLAGETT: Yes, and I think we have that im-
20 plicit here in this language.

21 THE CHAIRMAN: What troubles me is the fact that

1 the power to collect taxes may be deemed broad enough to
2 include imposition of taxes, unless you say the power to
3 collect taxes imposed by other representative governments.

4 MR. CLAGETT: I would have no objection to the
5 addition of those words. That would clarify the intent of
6 the Committee. I might also point out that here, too, it
7 was the General Assembly or other representative govern-
8 ments that could direct the imposition and then give the
9 intergovernmental authority the power to collect those
10 taxes imposed by that representative government.

11 THE CHAIRMAN: Any further comment as to (c)?
12 Mr. Sayre?

13 MR. SAYRE: Maybe this is a bit far out, but
14 shouldn't we say other representative governments within
15 the State?

16 THE CHAIRMAN: Mr. Clagett?

17 MR. CLAGETT: I don't think we have any other
18 label than the Maryland Constitutional Convention Commission.
19 I think that's a little far out, but -- as he said himself.
20 I don't think it's necessary, frankly.

21 MR. SAYRE: All right.

1 THE CHAIRMAN: Dr. Bard?

2 DR. BARD: Have we provided here or do we seek
3 not to provide specifically in terms of an executive offi-
4 cial?

5 THE CHAIRMAN: I'm not sure I follow you.

6 DR. BARD: Now, we speak all along here about so-
7 called legislative bodies for a regional government.

8 THE CHAIRMAN: No, we talk about governing
9 bodies, but no legislative bodies in this section.

10 DR. BARD: Therefore, there might be an elected
11 executive official as well.

12 THE CHAIRMAN: Yes.

13 DR. BARD: All right.

14 THE CHAIRMAN: Any further comment as to Section
15 11.02? If not, we move to consideration of 11.03, on Page
16 12.

17 MR. CLAGETT: Section 11.03, powers of the
18 counties, is substantially unchanged from the draft as con-
19 tained in the Sixth Report and they are designated as
20 Section 11.02, as approved by the Commission.

21 One significant addition is the exclusion in

1 Subsection (a) of judicial power from the broad grant of
2 powers to the county and that appears, a county may exercise
3 any power other than judicial power. This, of course, is
4 the key section to the whole local government article and
5 goes on to further provide that the counties may exercise
6 any power not specifically denied by general law, the home
7 rule charter or the Constitution.

8 THE CHAIRMAN: Mr. Martineau?

9 MR. MARTINEAU: Mr. Clagett, isn't the clause
10 after, or by law, merely a definition of general public law
11 and couldn't you merely say general public law?

12 MR. CLAGETT: Well, you are the one I thought
13 suggested that public general be stricken out and we say
14 merely by law, because by public general law was in the
15 fourth draft, or whatever draft it was.

16 MR. MARTINEAU: The phrase after that means
17 general public law.

18 MR. GENTRY: And it's repeated in (c).

19 MR. MARTINEAU: This is merely a stylistic
20 change, merely saying general public law.

21 THE CHAIRMAN: My comment would be that I'm not

1 sure it would be clear that it be the law applicable to a
2 class of counties and not all counties.

3 MR. MARTINEAU: The definition of general public
4 law is one applicable to a class.

5 DR. BURDETTE: Not the present. We're trying to
6 make clear we're not talking about the present language.

7 THE CHAIRMAN: Can we leave that to Style?

8 MR. CLAGETT: I think this matter was already
9 decided and what we've done here is conform with what was
10 a decision of the Commission at an earlier date and it was
11 revised from what you are suggesting adding to what is now
12 there, as you are reading it.

13 THE CHAIRMAN: Mr. Scanlan, did you have a ques-
14 tion?

15 MR. SCANLAN: I was wondering, just to save lan-
16 guage, the phrase, judicial power. Judicial power is vested
17 by the Constitution to the Judiciary and wouldn't be there
18 if denied by any county and why do we have to say so? We
19 didn't say so in the last paragraph and phrase and we just
20 added a phrase that's superfluous.

21 THE CHAIRMAN: It was added because there was some

1 doubt and I was the one that expressed the doubt that it was
2 abundantly clear, that here you had a provision that said
3 a county may exercise any power and in another one it
4 stated it did not.

5 MR. CLAGETT: One of my Committee members tells
6 me the same as Mr. Martineau, Mr. Scanlan suggested to put
7 it in.

8 MRS. BOTHE: Dr. Winslow kindly supplied me with
9 a change. I would therefore propose the section be amended,
10 the second clause, which now reads, By its charter or by
11 law, which in its terms affects and is applicable to all
12 counties or all counties of its class, and to which I would
13 propose adding, Except as provided in Section 11.02, the
14 effect being that the Legislature could then take away
15 powers of a county government in order to create regional
16 governments, but in no other case, and would not be
17 restricted to classification in that event.

18 MR. CLAGETT: I would oppose that, Mr. Chairman,
19 in that I think --

20 THE CHAIRMAN: Just a second. Is there a second?

21 MR. SAYRE: Seconded.

1 MRS. BOTHE: This is an amendment which would
2 follow, counties of its class, fourth line on Page 2.

3 THE CHAIRMAN: Fifth line.

4 MR. BOTHE: I'm reading from Page 2.

5 MR. MARTINEAU: 11.03(a).

6 MRS. BOTHE: 11.03(a) would be amended to add,
7 Except as provided in Section 11.02.

8 THE CHAIRMAN: Mr. Clagett?

9 MR. CLAGETT: And you would still continue to
10 include the phrase, And which has not been transferred to
11 another civil division, in order that I understand the --

12 MRS. BOTHE: Mr. Chairman, I better amend or
13 change my motion and perhaps I'm still premature. Dr.
14 Winslow points out, and I believe he's correct, that this
15 amendment should go in Section 11.03(c), rather than in (a).

16 THE CHAIRMAN: All right. Well, let's pass it,
17 then, until we come to (c). Any further question as to (a)?
18 If not, 11.03(b). Let's go back, if we may, to 11.02(c).
19 Mr. Case had mentioned a problem in connection with that
20 section and I had forgotten to mention it when we considered
21 it.

1 MR. CASE: Actually, Mr. Chairman, I think it's
2 already in (c), 11.02(c). The point that I want to bring
3 to the attention of the Commission is the same point, but
4 applicable to 11.03A.

5 MR. CLAGETT: What point is that? I think I know
6 what it is, but --

7 MR. CASE: The point is simply this. This sec-
8 tion gives the counties all powers, with the exceptions
9 noted, and this included, of course, the power to borrow
10 money and impose taxes and I think the explanation says
11 it's supposed to be plenary.

12 Now, I have this question. The present Constitu-
13 tion, Section 54, Article III, I think it is, provides cer-
14 tain limitations on the power to borrow money. Those limi-
15 tations are in substance that no county can lend its credit
16 to any firm, person or corporation, much in the same way
17 that the State's power to borrow is hedged in this area.

18 Now, you will recall that in our meeting at
19 College Park, in discussing the State's power to borrow
20 money we eliminated the provisions relating to specifically
21 the State could not lend its credit to any firm, person or

1 corporation and substituted in lieu thereof the safeguard
2 that the State could only lend its credit for a public pur-
3 pose. That was the Committee's report and the Commission
4 went further than the Committee did to put a tightener on
5 that particular provision, as I recall it, by requiring
6 that where the credit of the State is going to be used or
7 lent, that it had to be by law passed by a two-thirds
8 majority of both houses.

9 Now, I think that it is inconsistent and incon-
10 gruous to provide that the counties could lend their credit
11 to anybody for any reason, as this particular provision
12 would indicate, and yet have these safeguards on the State
13 and, if you will recall back, we discussed this whole area
14 of the lending of credit of public agencies at that time
15 and I don't think it's necessary to go into it, now. I
16 think that so long as the Commission has made its judgment
17 with reference to the safeguards of lending the credit of a
18 public agency insofar as the State is concerned, that the
19 same general safeguards ought to be applicable in the case
20 of a county lending its credit.

21 So, I would like to, just to put this whole

1 thing in focus, I would like to move, Mr. Chairman, that
2 11.03(a) be supplemented by a provision that would say that
3 no county shall lend its credit unless for a public purpose
4 and by a law requiring a three-fifth's vote of the General
5 Assembly.

6 MR. GENTRY: The General Assembly?

7 MR. CASE: As I understand it, these are going
8 to be powers that a general law -- in other words, as I
9 visualize it, you are going to have one law saying what
10 you can do countywide, which would be a public general law --

11 THE CHAIRMAN: No. The county has the power
12 unless the Legislature says what it can't do.

13 MR. CASE: I understand that, but it would un-
14 doubtedly say -- this is a prohibitory thing I'm suggesting.
15 So, I would think that you would want -- in other words, it
16 would say that the county couldn't by Constitutional mandate
17 lend its credit for any purpose, but then the exception
18 would be, of course, unless it was a public purpose and
19 then there would have to be a vote of two-thirds -- maybe
20 this is a little confusing as I speak about it. I'm a
21 little confused myself, but what I'm trying to do, of

1 course, is to make the thing symmetrical with the prohibitions
2 we put on the statement in the use of its credit. Maybe
3 somebody has --

4 THE CHAIRMAN: Well, the section that was adopted
5 by the Commission with reference to the State credit pro-
6 vided first that the State should have the power to incur
7 indebtedness for any public purpose in such manner and upon
8 such terms and conditions as the General Assembly may pres-
9 cribe. Then followed the detailed provisions.

10 MR. CASE: That's right. Drop down. It's the
11 last sentence.

12 THE CHAIRMAN: The last sentence provides the as-
13 sets or credit of the State shall not in any manner be
14 given or loaned to any individual, association or corpora-
15 tion unless a public purpose will be served thereby and un-
16 less authorized by an act of the General Assembly stating
17 such public purpose and limiting any loan or extension of
18 State credit to a period not exceeding 25 years.

19 MR. CASE: You haven't got the amendment in there.

20 THE CHAIRMAN: That is the amendment.

21 MR. CASE: No. Then it was amended --

1 THE CHAIRMAN: Yes.

2 MR. CASE: -- to require that there be a two-
3 third's vote.

4 THE CHAIRMAN: Three-fifth's.

5 MR. CASE: Or whatever the percentage is.

6 MR. BROOKS: Isn't this more in the nature of a
7 provision for the charter of a county?

8 MR. CLAGETT: A matter for for statute? Because
9 here in the Constitution you are placing --

10 THE CHAIRMAN: Wait just a second. If I could
11 say something to get it in prospective. Under the concept
12 here, this is a matter, the matter of borrowing money or
13 lending the credit of a county to be resolved either by a
14 limitation imposed by the Legislature or limitation imposed
15 by the county charter. As I understand Mr. Case's sugges-
16 tion, it is that the Constitution ought to have at least
17 two overriding limitations, that every charter or every
18 general law would have to include. Is that essentially it?

19 MR. CASE: That's essentially it.

20 THE CHAIRMAN: And the two limitations would be
21 that any power to incur indebtedness is for public purpose

1 and, secondly, that the lending of the credit of the county
2 be authorized by an extraordinary vote of whatever the
3 authorizing body would be.

4 MR. CLAGETT: Is that the General Assembly or
5 the county legislative body?

6 THE CHAIRMAN: Whatever the authorizing body
7 would be.

8 MR. CASE: Whatever the authorizing agency would
9 be.

10 MR. CLAGETT: I understand it.

11 THE CHAIRMAN: To get that before us, Mr. Case,
12 would you make a motion and I would suggest that it not be
13 an amendment of any of these existing subsections, but an
14 additional subsection to 11.03.

15 MR. CASE: I so move.

16 DR. BARD: Seconded.

17 THE CHAIRMAN: The motion is that an additional
18 subsection be added to 11.03 to provide that the county
19 shall have the power to incur indebtedness only for a public
20 purpose and that it could not lend assets or credit of the
21 county unless a public purpose would be served and the public

1 purpose stated in an act passed by an extraordinary vote of
2 the authorizing body. Is that correct?

3 MR. CASE: That's it.

4 THE CHAIRMAN: Is there a second?

5 DR. BARD: Seconded.

6 THE CHAIRMAN: Mr. Case, do you want to speak to
7 it any further?

8 MR. CASE: No, I think the Commission understands
9 my position. I'm suggesting this for two reasons. One,
10 from time immemorial, it has been true that the same general
11 restrictions have been placed upon the county's power to
12 borrow as has been placed upon the State's power to borrow,
13 as found in Article III, Sections 34 and 54. So, this
14 point is based on precedent.

15 Secondly, I think it is based on good common
16 sense because the credit of a county can be as effectively
17 destroyed by improvident management as the credit of the
18 State and just for the same reason that we wanted these safe-
19 guards to go in the Constitution, even though we are setting
20 up a very strong Legislature, still there are certain things
21 that even that strong Legislature should not be allowed to

1 do by Constitutional prohibition.

2 So, in the case of counties, I think the same
3 argument controls and perhaps controls to even a stronger
4 degree because it's probable that the agencies in the
5 counties which would be authorizing the issuance of debt will
6 not either have the expertise or perhaps the staff that the
7 improved Legislature would have for the purpose of deter-
8 mining the desirability of these loans. So, I think from
9 every standpoint this is a desirable thing which will be
10 helpful to the county's credit and the reverse would be
11 deleterious to it.

12 THE CHAIRMAN: Mr. Clagett?

13 MR. CLAGETT: This is only a question of detail
14 and not addressing myself to the merits of the motion.
15 What is an extraordinary vote of the legislative council or
16 of the county commissioners consisting of five county com-
17 missioners?

18 MR. CASE: Four, probably. Whatever their charter
19 says would be a vote necessary to override executive veto.

20 THE CHAIRMAN: Well, you see, in the county com-
21 missioners form you wouldn't have that. I would assume it

1 would be three, if it were three-fifth's. In the three
2 county commissioners, you wouldn't have executive veto.

3 MR. CASE: In Montgomery County, it's five,
4 isn't it? You see, you have no mayor, so it's not com-
5 parable. It's one more than a majority.

6 MR. SAYRE: Yes, five.

7 MR. CASE: Five.

8 THE CHAIRMAN: Mr. Sayre?

9 MR. SAYRE: I have a question here. Does that
10 mean if the county council should submit this question to
11 referendum, that the referendum could not be regarded as
12 an extraordinary vote?

13 THE CHAIRMAN: You mean as a substitution for an
14 extraordinary vote?

15 MR. SAYRE: As a substitution. This could very
16 well be the means of a bond issue.

17 MR. CASE: Well, it could be.

18 MR. SAYRE: It just seems too fuzzy, that I have
19 problems.

20 MR. CASE: Not any more fuzzy than it was with
21 the State.

1 MR. SAYRE: Except that we had to go to the
2 Legislature every time before.

3 MR. CASE: No, you don't. A charter county doesn't
4 have to go to the Legislature.

5 MR. SAYRE: Then this means --

6 MR. CASE: What it means is that the implementing
7 legislation would have to be passed by an extra vote, what-
8 ever that definition is.

9 MR. SAYRE: Would not a referendum count? That's
10 the question, what would constitute an extraordinary vote,
11 and I hope a referendum would be?

12 MR. CASE: There is only one county, if you
13 count Baltimore City, there are two, which require a referen-
14 dum on bond issues and I don't think that it makes any dif-
15 ference because I think that the important first step is
16 the enactment of the law and I think that the delegation of
17 the credit should be safeguarded at that initial step, be-
18 cause I'm afraid that -- of course, referendums on loans
19 could go all over the lot, but sometimes a popular loan can
20 still be a bad financial risk, as you well know.

21 MR. SAYRE: Yes. Therefore, you have an extra

1 vote even submitted to referendum.

2 MR. CASE: If a referendum were required by the
3 charter of that particular county.

4 MR. SAYRE: Well, they could either submit it or
5 not submit it, according to the terms of their charter.

6 MR. CASE: Most charters say they have to be sub-
7 mitted or, if it doesn't say anything, they are not sub-
8 mitted.

9 MR. SAYRE: Would this also apply to regional
10 governments?

11 MR. CASE: I would hope that it would. I would
12 suggest --

13 MR. SAYRE: It would be inconsistent not to
14 apply one place and --

15 MR. CASE: Yes. I think this is a very important
16 thing, because the whole is no stronger than the sum of the
17 strength of its parts, and once you start chipping away at
18 the level of the region or the county, then you are really
19 hurting the State. You are hurting everybody.

20 THE CHAIRMAN: Mr. Martineau?

21 MR. MARTINEAU: It would seem to me, although

1 I'm not certain about this, that the reason, of course, we
2 have provisions such as that with reference to State bond
3 issues in the Constitution is because that's the place you
4 have to have it. There is no other place that can impose
5 the restriction, without having it in the Constitution, but
6 I don't see why that is necessary as to counties where the
7 State Legislature by law applicable to all counties can im-
8 pose such a restriction.

9 We are putting in many restrictions here in the
10 Constitution with reference to the State Government that
11 we're not putting in with reference to the political sub-
12 divisions because there isn't any need to do it. The
13 Legislature can impose these restrictions, and I wonder
14 wouldn't it be just as much a safeguard to rely on the
15 Legislature to pass a law putting restrictions on the use
16 of the county borrowing power and we wouldn't have to put
17 it in the Constitution?

18 MR. CASE: I could answer that very simply. Ob-
19 viously, if the general law is going to control or restrict
20 the powers of the county, the answer to your question is it
21 would be, but the answer to it is that it's very easy to get

1 the express powers changed if you want to get it changed
2 and this will prevent a pressure group from getting express
3 powers changed.

4 Now, I've had some experience with getting amend-
5 ments to the current Express Powers Act and I know that the
6 larger counties who are concerned can very easily accomplish
7 this and I think that this is such an important thing, the
8 lending of the credit of a county, that it ought to be
9 beyond the reach of political pressures that can be brought
10 to bear in the Legislature.

11 THE CHAIRMAN: Mr. Gentry?

12 MR. GENTRY: If we are to make this exception
13 apply to both counties and regional governments, isn't it
14 possible right in the very section Mr. Eney was just
15 reading from to pick it up there and say neither a state
16 nor any county nor any regional county?

17 MR. CASE: I wouldn't care how it's done, Jim,
18 as long as --

19 MR. GENTRY: The other question I want to ask,
20 with the other counties having this plenary power denied,
21 would there be any chance that the county could pledge the

1 State's credit? Has that been excluded by --

2 MR. MARTINEAU: I don't think I would buy a bond
3 issue based on that.

4 THE CHAIRMAN: Mr. Clagett?

5 MR. CLAGETT: I don't think that's a very well-
6 grounded fear. My God, you can scare yourself to death,
7 but that doesn't necessarily mean you justify doing so.

8 MR. CASE: But you are just as dead.

9 MR. CLAGETT: You are just as dead, that's true,
10 but at the same time I would say it's a little foreign to
11 the field of politics as we're dealing with it here and
12 political science. Let me give the Committee's thinking
13 because we wrestled with this at some length and we in-
14 cluded consideration of the problem in our Third Report
15 and the conclusion of the Committee was, just as Mr.
16 Martineau has stated a little bit earlier, that contrary
17 to the situation with reference to the General Assembly
18 acting where there was no restraining power except through
19 the Constitutional language, the counties acting here do
20 have the restraining power of the General Assembly and if
21 what you are proposing now is considered to be advisable,

1 it can be made a matter of statute by the General Assembly
2 when it acts to withdraw the powers by general public law
3 and I believe that, acting in that manner, notwithstanding
4 the contrary point of view, gives a degree of flexibility
5 to the situation which is a greater argument in its favor
6 than the opposite, which is that it permits change.

7 I think the change is more desirable than unde-
8 sirable and the inflexibility of Constitutional language
9 would require the Constitutional amendment to change it is
10 more of an argument against than in favor.

11 THE CHAIRMAN: Mr. Case:

12 MR. CASE: I feel pretty strongly that there are
13 certain times when it pays to be a little inflexible. There
14 is nothing gained by being flexible just for the sake of
15 saying you can go off in all directions at the same time
16 and, when I come to this matter of credit and have the
17 borrowing power of the counties, which is a very important
18 ingredient to them, it just seems to me that the time to
19 stand on strict principles is in the basic document.

20 Now, this may be a conservative point of view
21 and I will grant that it is, but it has been my experience

1 in dealing with people who rate bonds and people who pay
2 money for them and the syndicates and so on, that they are
3 looking for this and when they see this great area of
4 flexibility, you get a minus mark. This is not an academic
5 point. This is a practical, down to earth, dollars and
6 cents thing I'm talking about, and I think that, very
7 frankly, if the whole matter is left in the Express Powers
8 Act, all right, that's fine. It can conceivably be con-
9 trolled there with perfect degree of safety, except that
10 it is always subject to political maneuver and we're
11 talking about credit here which is just about as sacred a
12 thing as the county has and I think it ought to be in the
13 document.

14 THE CHAIRMAN: I'd like to say that the only
15 thing with reference to a non-charter county is in the Ex-
16 press Powers Act.

17 MR. CASE: No, Section 54.

18 THE CHAIRMAN: That just says no county shall
19 contract any debt, and so forth, unless authorized by an
20 act of the General Assembly and there are no Constitutional
21 limitations on it.

1 MR. CLAGETT: It's a statutory limitation.

2 THE CHAIRMAN: That's in the Express Powers Act.

3 My point is, there's a slight difference in that and what
4 we're talking about. Under the present Constitution, as I
5 understand, there are only three things as far as counties
6 are concerned, Section 54, Article XI, so far as Baltimore
7 City is concerned, and Section 7 of that article, which is
8 quite detailed, and then the general provisions in Article
9 XI(A), as to any charter county, which means simply it's
10 governed by any statute in the charter. So, wouldn't we be
11 adding something into this Constitution that is not now there?

12 MR. CASE: Contract, that's true, because now not
13 only do you have the Express Powers Act, as far as counties
14 are concerned, of course, every charter county or other
15 county, there has to be a special act passed.

16 THE CHAIRMAN: But there is nothing in the Con-
17 stitution as to non-charter counties.

18 MR. CASE: Except 54.

19 THE CHAIRMAN: Which simply says you have to have
20 an act of the General Assembly.

21 MR. CASE: It says more than that.

1 MR. SAYRE: No County of this State shall con-
2 tract any debt, or obligation, in the construction of any
3 Railroad, Canal, or other Work of Internal Improvement,
4 nor give, or loan its credit to, or in aid of any association,
5 or corporation, unless authorized by an Act of the General
6 Assembly.

7 MR. CASE: All right, but the point there is
8 that you have to have an act and you will find that Section
9 54 has been interpreted exactly the same way as 34 has, in
10 what I'm talking about, namely -- and the Frostburg case
11 says this, that the counties cannot lend their credit for
12 private purposes.

13 MR. SAYRE: Well, that's all right.

14 MR. CASE: And that's all I'm saying and the
15 Court of Appeals has expressly interpreted this section to
16 so provide. The two sections came into the Constitution in
17 1851. The two sections were identical in purpose. The
18 county section was a little more detailed at first and some
19 of the mish-mash has been taken out, but the same situation
20 came up in Anne Arundel County, and I forget the name of the
21 case, but in that case the same thing came up as came up in

1 Baltimore versus Gill, and in that case the Court of Appeals
2 held that Section 54 prohibited the counties from lending
3 their credit just as Section 34 prohibited the State from
4 lending its credit.

5 THE CHAIRMAN: Dick, I don't think that's cor-
6 rect. I think what the Court of Appeals said was that the
7 county was prohibited by the act of the Legislature, not
8 by Section 54.

9 MR. CASE: No, it didn't either. Well, I haven't
10 read the case for some time, but I'm pretty sure that it
11 held that the same type of transaction, the Baltimore and
12 Gill type of transaction was invalid.

13 MR. MARTINEAU: Because it wasn't authorized by
14 the Legislature, I think.

15 THE CHAIRMAN: That's what I think was the de-
16 cision.

17 MR. MARTINEAU: Is that the Perry Point Railroad?

18 THE CHAIRMAN: Drum Point Railroad.

19 MR. MARTINEAU: Drum Point.

20 THE CHAIRMAN: No, there was an act of the
21 Legislature, I believe. I'm pretty sure there was. Mrs.

1 Freedlander?

2 MRS. FREEDLANDER: Mr. Chairman, I have two ques-
3 tions. I'm not disagreeing with the premise that Mr. Case
4 makes, but I have two questions. If there is a court de-
5 cision, does that not prevail and we would not need any
6 other legislative provision? That would be my first ques-
7 tion.

8 My second question is how can we tell a charter
9 county, because we want all of these counties to have some
10 instrument of government, what decision should be made by
11 extraordinary vote? How can we direct them to this? Is
12 this not the right of the charter makers?

13 MR. CASE: Answering your questions in the order
14 you proposed them, if the Constitution were to remain as it
15 is, I wouldn't worry because you've got a provision and
16 it's interpreted by a court decision and no county in this
17 State would dare to -- I would say this -- certainly, I
18 don't think any competent bond counsel would pass a bond
19 issue where the money was going to be turned over to purely
20 a private purpose, because of the wording of 54, but we're
21 changing that now and I'm afraid it's sweeping that away

1 and I'm merely trying to preserve what we've got.

2 THE CHAIRMAN: Well, I think this is a real de-
3 parture from the existing Constitution. If we had the same
4 setup as under the existing Constitution, where you had the
5 necessity for either an act of the General Assembly or a
6 general Express Powers Act, I would not be too much con-
7 cerned by the point that Mr. Case mentions, but I think
8 that the fact that we now say all counties, which would mean
9 a county which has not adopted a charter form of government,
10 would have the power, and there is no limitation in the
11 Constitution as to its borrowing power, then, unless the
12 Legislature adopts a general act limiting the power of all
13 counties in the area of borrowing money, the county would
14 have unlimited power and this, I think, is a little dif-
15 ferent from what we have at the present time and it gives
16 me, at least, some concern.

17 MRS. FREEDLANDER: Would you answer my second
18 question, please, with regard to the extraordinary vote?
19 Our right to tell --

20 THE CHAIRMAN: I personally feel that the extra-
21 ordinary vote ought to be whatever is provided in the

1 charter of the county, if you are going to give them home
2 rule.

3 MR. CLAGETT: Mr. Chairman, I would say to that,
4 that that situation, assuming that that situation could
5 exist, could not exist more than four years and it seems to
6 me --

7 THE CHAIRMAN: Why do you say that?

8 MR. CLAGETT: Because after a four-year period,
9 the non-charter counties would have a charter.

10 THE CHAIRMAN: I see what you mean.

11 MR. CLAGETT: And certainly it is to be contem-
12 plated that any charter of a county, however it's adopted,
13 will include some such restriction as we are envisaging
14 here or will make some provision for it and I merely suggest
15 that it would be a very real departure and mistake to now
16 write into the Constitution a restriction upon a broad grant
17 of power which we are giving for the purpose of vitalizing
18 and stimulating a county government, and to now come along
19 and start putting restrictions upon it would be a mistake.

20 Now, with reference to a point of Mrs.
21 Freedlander's, of course, we do tell the counties that in

1 their charters they must provide for amendment of those
2 charters. I don't see any practical difficulty in saying
3 here is another restriction which you will have to write
4 into your Constitution, but I really feel that the argument
5 turns on whether or not we should do it, sitting here within
6 these four walls, or whether we should let the General
7 Assembly take care of it, knowing that at the most it would
8 only be a period of some four years.

9 THE CHAIRMAN: Mr. Hoff?

10 MR. HOFF: We sat here within these four walls
11 and made the limitation upon the State's borrowing power.
12 I can't for the life of me see how we can be consistent and
13 grant to counties greater powers of borrowing than we have
14 granted to the State.

15 MR. CLAGETT: Well, I think I better add, as-
16 suming now that the Legislature, when it acts to withdraw,
17 as it must immediately after the passage of a Constitution
18 such as we are preparing here, when it acts to withdraw
19 powers from the counties, certainly this area will come into
20 consideration at that time and you will recall that since,
21 by the broad grant, the General Assembly will have to

1 withdraw and in the process of withdrawal reclassify and
2 redefine the relationship between the counties and the
3 General Assembly, a very, very important area. It throws
4 us back into the phase of a discussion of the Committee
5 when we were trying to decide whether the Constitution
6 should give to the counties the broad grant of power or
7 whether we should do so by express powers and one of the
8 strong arguments against the broad grant of power was the
9 fact that hand in hand with the broad grant of power would
10 be the imposition upon the General Assembly of the respon-
11 sibility of redefining and clarifying the lines between it
12 and the counties by general withdrawal power, because there
13 would be many areas within which the General Assembly would
14 not want the counties to act.

15 MR. HOFF: I must confess, I'm lost. I thought
16 we were talking about simply imposing upon the counties the
17 same limitation in borrowing that we have already decided
18 to impose upon the State and, regardless of these grants
19 of power or withdrawals of power, it seems to me to be con-
20 sistent to have a similar imposition upon the counties as
21 we have imposed upon the State Legislature. It's as simple

1 as that.

2 THE CHAIRMAN: One slight correction. Not the
3 same, but two of the limitations. There are many more
4 limitations on the State.

5 MR. HOFF: We're just talking about --

6 THE CHAIRMAN: The two of them. Mr. Case, I am
7 troubled by one thing that could possibly happen with
8 reference to your suggestion and I wonder if you would con-
9 sider a slight modification of your motion and that is a
10 section that would authorize the charter of a county or the
11 General Assembly by public general law to impose such
12 limitations on county borrowing as might be deemed desirable,
13 but not less than these two things.

14 In other words, I don't want to create the in-
15 ference that there should be no other limitations than these
16 two.

17 MR. CASE: This is certainly implicit in my
18 amendment. That limitation is the motion, readily citable
19 and an example of what you are talking about.

20 THE CHAIRMAN: Now, I sense that there may be a
21 difference of opinion on the two points and I wonder if it

1 would be desirable to separate the two. Your motion as
2 clarified was that it be an extra vote of the authorizing
3 body, not the General Assembly.

4 MR. CASE: That's right.

5 THE CHAIRMAN: Mr. Sayre?

6 MR. SAYRE: I have one question. When we say
7 extraordinary vote, could this vary from county to county,
8 whatever that governing body determines?

9 MR. CASE: That's right.

10 MR. SAYRE: We don't require that now of our
11 counties, do we?

12 MR. CASE: Well, again, let me say that under
13 the present Constitution, as interpreted by the Court of
14 Appeals, a county can't do this. All we're talking about,
15 and I think your question is a very good one because it
16 leads back to the thing, the long, rambling statement Mr.
17 Claggett made which is that it's fine --

18 MR. CLAGGETT: I want to point out it's ten
19 minutes of five and we didn't get any coffee this time.

20 MR. CASE: -- as far as an academic disposition
21 of this general problem is concerned, but we're talking

1 about one very narrow thing here. We're not talking about
2 broad grants of this or broad grants of that. We're
3 talking about a very fundamental thing, the lending of
4 credit for private purposes.

5 Now, this cannot be done under the present Con-
6 stitution. All I am saying is --

7 MR. SAYRE: I have no argument with that.

8 MR. CASE: All I'm saying is we ought to put
9 words in here that make sure that this is contingent --

10 MR. SCANLAN: Can we have the amendment restated?
11 These long, rambling discussions, pro and con --

12 THE CHAIRMAN: Section 11.02 be amended by adding
13 thereto another subsection providing in substance that the
14 power of a county to borrow money or to give or lend its
15 assets or credit be limited in such manner as may be pro-
16 vided by public general law or by the charter of the county,
17 but that in any event the county should not have the power
18 to incur indebtedness except for a public purpose and that
19 the assets or credit of the county should not be given or
20 loaned to any individual, association or corporation unless
21 a public purpose would be served thereby and unless

1 authorized by an act of the governing body stating such
2 purpose and adopted by an extra vote of such authorizing
3 body.

4 MR. HOFF: I thought it was understood that
5 regional governments were to be included.

6 MR. CASE: That's true.

7 THE CHAIRMAN: Yes, the motion as I stated it
8 limited to counties, the same effect would be applied to
9 regional governments.

10 DR. BURDETTE: How about intergovernmental
11 authorities?

12 THE CHAIRMAN: I would not think so.

13 DR. BURDETTE: Their credit is private?

14 MR. CASE: Only for the purpose they are created.

15 THE CHAIRMAN: Mr. Haile?

16 MR. HAILE: Mr. Chairman, I think to put this in
17 the Constitution would be the kind of window dressing which
18 would help the county sell bonds and, therefore, I would be
19 in favor of putting this in the Constitution.

20 THE CHAIRMAN: Mrs. Bothe?

21 MRS. BOTHE: Mr. Chairman, the vote is not as to

1 where -- recalling Mr. Case's statement before that it was
2 agreeable with him to put it in the finance article along
3 with State restrictions and thinking that that's probably
4 the best idea, we're not voting on where it's going. We're
5 just voting on principle.

6 THE CHAIRMAN: I would say we're voting on the
7 principle, but I don't believe it's the best place for it,
8 because we're talking here about the powers of counties and
9 I think it would be desirable to include it here.

10 MRS. BOTHE: Then we'd have to put another sec-
11 tion in on regional governments and perhaps other parts.
12 It makes it rather cumbersome.

13 MR. CLAGETT: This is sure giving us problems.

14 THE CHAIRMAN: Let's leave that to be resolved
15 by the Committee on Style, where it goes.

16 MR. SAYRE: Could I ask for a further explanation?
17 Is there any reason why this should not be in the Constitu-
18 tion, from someone I've not heard from? I'm trying to be
19 assured that you are right and I think you are.

20 THE CHAIRMAN: Is there any further discussion?

21 MR. CLAGETT: I may recognize that the man

1 does not live that may be of greater authority than the man
2 who has just spoken.

3 THE CHAIRMAN: Ready for the question? The
4 question arises on the motion to provide either in Section
5 11.03, or elsewhere, a separate provision applicable alike
6 to regional governments and to counties which provides that
7 the regional government or the county shall be subject to
8 such restrictions as may be imposed by a public general law
9 or by its charter in the borrowing of money or the lending
10 of its credit, but that, in any event, the regional govern-
11 ment and the county's power to borrow money be limited to
12 borrowing money, incurring indebtedness for a public purpose
13 and that the power to give or lend the assets or credit of
14 the county or regional government to a private person, in-
15 dividual or corporation be subject to the limitation that
16 it can be authorized only by an extraordinary vote of the
17 authorizing body.

18 Are you ready for the question? A vote aye is
19 a vote in favor of including such a provision in the Con-
20 stitution. All those in favor, please signify by a show of
21 hands. Contrary? The motion is carred, 18 to 2.

1 DR. BURDETTE: Mr. Chairman, can I ask, some-
2 what out of order, Mr. Case to look at 11.02(c), in which
3 the General Assembly may authorize intergovernmental
4 authorities to borrow money? Shouldn't that be at least
5 to borrow money for a public purpose? We just didn't get
6 that one covered in this discussion.

7 MR. CLAGETT: Well, can the General Assembly
8 authorize an intergovernmental authority to borrow money
9 which would exceed the authority of the General Assembly?

10 DR. BURDETTE: I don't know.

11 THE CHAIRMAN: Well, conceivably. If we didn't
12 have this limitation we just adopted, I suppose the General
13 Assembly could authorize the county to borrow money without
14 the provisions in Section 34.

15 MR. CASE: Wouldn't it be sensible to include
16 intergovernmental authorities with counties? I think we
17 should. I think Dr. Burdette is correct here, that
18 authorities ought to be in with the counties.

19 THE CHAIRMAN: If they have the right to borrow
20 money, it seems to me --

21 DR. BURDETTE: I thought so, in the first place.

1 Intergovernmental authorities should be put in this motion
2 just passed.

3 MR. CASE: I would so move.

4 MR. MARTINEAU: Seconded.

5 THE CHAIRMAN: Any further discussion of that
6 question? The question arises on the motion to include,
7 subject to the same limitations as adopted by the previous
8 motion, intergovernmental authorities referred to in 11.02(c).
9 All those in favor, signify by saying aye. Contrary, no.
10 The ayes have it. So ordered. Any further question with
11 reference to Section 11.03(a)?

12 11.03(b). Mr. Clagett?

13 MR. CLAGETT: Here we provide for classification
14 and the classification is based upon population as deter-
15 mined by the most recent U.S. Census or upon other criteria
16 provided by law. We, however, limit the number of classes
17 to five and the number of counties must be at least three in
18 any one class. A classification may be changed, but only
19 one classification may be in effect at any one time.

20 This, I might add, is similar to the section
21 previously considered by the Commission and approved at

1 that time without change, other than that the criteria must
2 be one provided by law and we've done so here.

3 THE CHAIRMAN: Dr. Bard?

4 DR. BARD: What troubles me about upon other
5 criteria, and then this matter, it shall be in effect at
6 any one time, but the classification may be changed at any
7 one time, it would be perfectly possible to change the
8 specific criterion at any time you wanted to and in this
9 you would ever be evolving classifications in terms of
10 rationalization that might be required in order to fulfil
11 an idea.

12 It seems to me that if you stick to population --

13 THE CHAIRMAN: Dr. Bard, this question has been
14 discussed before and debated and resolved. So, you will
15 have to move for a reconsideration, if you want to discuss
16 it further.

17 DR. BARD: I realize that. I would like an ex-
18 planation of, upon other criteria. Is there some kind of
19 limitation there which the Committee had in mind? That's
20 what troubles me.

21 THE CHAIRMAN: The Committee had a limitation

1 and the Commission took it out.

2 DR. BARD: Which one was it? I forgot.

3 THE CHAIRMAN: Which Commission meeting?

4 DR. BARD: What was the limitation?

5 THE CHAIRMAN: Geography, as I remember it.

6 MR. BROOKS: Well, this is varied, because of the
7 same item -- this is tied in very closely with the item
8 Mrs. Bothe was talking about and if it is to be recon-
9 sidered, it has some bearing on this, in that the question
10 of whether or not the alternative to the Legislature being
11 able to take away powers from counties vested in their
12 regional government should be separate from the classifica-
13 tion system was considered last time, is also involved in
14 this problem of what is the nature of the classification
15 system.

16 As the Commission ended up at the Brown Estate,
17 the thought was, yes, for purposes of taking away powers
18 from counties to vest them in any kind of regional govern-
19 ment, the classification system would have to be utilized
20 and, if it were to be utilized, then it could not be based
21 just on a population basis because the area to be covered

1 by regional government may not fit in one of the classifica-
2 tion systems because, taking an example, it could be
3 Baltimore and the surrounding counties, in which case
4 Howard County may be one of those you want to include and
5 the only way to give them powers that are taken away from
6 the counties to cover it in the area may be through the
7 classification system.

8 Therefore, the criteria would have to be open,
9 not restricted to population, to permit a regional con-
10 glomeration as well as for other purposes, perhaps some
11 population criteria.

12 On the other hand, if the method of taking away
13 powers from counties is to be an exception with regard to
14 the establishment of regional government, then there is no
15 particular reason why the classification system in this
16 section needs to be anything other than limited to
17 classification. So, it's very tied up with this same ques-
18 tion, as to whether or not you are going to have this as
19 the only method to give powers to regional governments that
20 are taken away from counties or not. But if this is the
21 only way to utilize the assemblage of counties into a

1 regional government, then it has to be broader than just
2 classification.

3 THE CHAIRMAN: In other words, to answer your
4 question specifically, another criteria could simply be
5 proximity of two counties or three counties.

6 DR. BARD: Yes, I realize that. However, it
7 would also be possible to vest within the entire regional
8 government that was established the maximum powers of the
9 particular county in the highest category, let us say. Am
10 I making that clear?

11 THE CHAIRMAN: Yes. If you had a previous
12 classification.

13 DR. BARD: Right.

14 THE CHAIRMAN: But then that classification --
15 well, no, it wouldn't die, necessarily.

16 DR. BARD: I'm going to wait until Mrs. Bothe
17 makes her motion, but it still is true, I see this whole
18 concept as a possibility of recreating the whole theory of
19 local government. You just rehash time and time again your
20 classifications in order to rationalize what you seek to do.

21 THE CHAIRMAN: Except that the difficulty of

1 doing that operates as a brake line.

2 MR. CLAGETT: And the difficulty is built in, in
3 that it's got to be at least three counties and there could
4 be no more than five classifications at any one time.

5 THE CHAIRMAN: No more than one classification
6 at any one time.

7 MR. CLAGETT: No more than one classification
8 with five classes.

9 DR. BARD: But it doesn't tell how long that may
10 last, but one day.

11 MR. BROOKS: But those laws enacted that deal
12 with classification won't apply to whatever counties are
13 taken out of the class, so that you destroy what you did
14 the day before and that's the brake on the whole system.

15 MR. CLAGETT: I want to point out that by this
16 dual approach you do give a degree of flexibility to the
17 General Assembly which you would otherwise be denying it.

18 DR. BARD: I'd like, as Mr. Case has said, both
19 flexibility and dependability.

20 THE CHAIRMAN: Any further questions as to
21 Paragraph B?

(There was a short recess.)

1 THE CHAIRMAN: Mr. Sayre?

2 MR. SAYRE: My question, in regard to 11.03(b),
3 relates to Mrs. Bothe's previous amendment. Is it not
4 conceivable that a regional government could consist of
5 two counties? That's my first question.

6 THE CHAIRMAN: It could be, yes, certainly.

7 MR. SAYRE: And I could see this is quite
8 feasible in at least one area.

9 THE CHAIRMAN: That's right.

10 MR. SAYRE: Therefore, the General Assembly
11 could enact, for that reason, apart from this provision
12 in (b); is that correct?

13 THE CHAIRMAN: What do you mean when you say
14 could enact? You mean local laws?

15 MR. SAYRE: Well, regional laws. Something
16 that would be delegating powers to that body or with-
17 drawing.

18 THE CHAIRMAN: It could grant and withdraw
19 powers, but it wouldn't have the power of local legisla-
20 tion for that region, any more than it would have for the
21 county.

1 MR. BROOKS: It could grant, but not withdraw.

2 THE CHAIRMAN: It could grant today and take
3 away tomorrow.

4 MR. BROOKS: But it's the withdrawal as
5 separate from the granting that is important.

6 MR. SAYRE: I just wondered if there were any
7 inconsistencies with the three county requirement here.

8 THE CHAIRMAN: As I understand it, the whole
9 concept of this thing, the creation of a region is not
10 dependent upon the classification of counties. A classi-
11 fication of counties is necessary to enact something less
12 than a State-wide law by the Legislature.

13 MR. SAYRE: That answers my question.

14 THE CHAIRMAN: Mr. Scanlan?

15 MR. SCANLAN: Dr. Bard has expressed some
16 concern about the phrase, or upon other criteria provided
17 by law. I assume that the phrase still means reasonable
18 criteria. Our geographic areas -- classifications such
19 as bordering the Chesapeake might be reasonable, but the
20 classifications of two counties that had two vowels in
21 its name would be unreasonable and would be limited by

1 Section 4, and would be further limited by the equal
2 protection clause of the Fourteenth Amendment. I assume
3 this is implied.

4 MR. BROOKS: For practicality, the whole
5 situation probably is an overriding check on the whole
6 system.

7 MR. SCANLAN: Of course.

8 THE CHAIRMAN: The only purpose of classifi-
9 cation is to have something less than a State-wide law.
10 Now, it doesn't make sense to have a classification to
11 carry out that purpose and if by creating a purely
12 arbitrary classification you have tied your hands, then
13 the whole thing is going to fail. Dr. Jenkins?

14 DR. JENKINS: Mr. Chairman, I really must
15 trust the General Assembly. They may have a classifica-
16 tion based on average income in order to get at the
17 welfare situation in the major cities. This would be a
18 reasonable classification, but I think we have to trust
19 the General Assembly on this, although there are members
20 of the General Assembly who would propose something such
21 as this.

1 THE CHAIRMAN: It seems to me the overriding
2 provision or effect of the provision is you can only have
3 one classification at one time. Therefore, if the
4 Legislature classifies counties to accomplish some very
5 narrow purpose, it has therefore tied the hands in classi-
6 fying counties for accomplishing a broad purpose. Any
7 further question as to 11.03(b)?

8 11.03(c), Mr. Clagett. I'm sorry, Mr. Case.

9 MR. CASE: Mr. Chairman, I just throw this out.
10 The five -- well, maybe I'm wrong. All right, I think I
11 understand it now.

12 THE CHAIRMAN: Section (c), Mr. Clagett.

13 MR. CLAGETT: Subsection (c) says what the
14 Commission told us to say, this is a public general law,
15 that the General Assembly may act only by public general
16 law, which is further defined as one in terms and effects,
17 applying without exception to all counties or to all
18 counties in a class and no county shall be exempt.

19 That, I think, carries out the intention of
20 the Commission when it last considered this at the Brown
21 Estate meeting.

1 THE CHAIRMAN: Mr. Hoff?

2 MR. HOFF: For purposes of clarification and
3 consistency, after the words, applicable to, in the last
4 line, should not the words, all counties or to all counties
5 in its class be inserted?

6 THE CHAIRMAN: Yes.

7 DR. BURDETTE: You want to change a to it?

8 MR. CLAGETT: I have no objection to that.

9 THE CHAIRMAN: Any objection to the change in
10 the last line of (c), after the words applicable to, insert
11 the words, all counties or to all? Any further questions?

12 MRS. BOTHE: I was going to put that amendment
13 in, but before I do, I was wondering if the General
14 Assembly wanted to pass legislation which applied to a
15 region, would this language agree, providing to a region
16 or any one classification?

17 MR. BROOKS: It would preclude it unless they
18 were in the same classification and then the classifica-
19 tion system would permit it.

20 THE CHAIRMAN: Or unless it were a law granting
21 powers.

1 MRS. BOTHE: I was wondering if I should expand
2 my motion, but I will present it as I was going to. It
3 would be the General Assembly may enact only public
4 general laws which shall in their terms and in their
5 direction apply without exception to all counties or to
6 all counties in a class, to which I would suggest the
7 following words be added, with the exception of the with-
8 drawal of county powers provided for in Section 11.02(b).

9 MR. CLAGETT: What exactly do you mean?

10 THE CHAIRMAN: Is there a second?

11 MR. MARTINEAU: Second it.

12 MRS. BOTHE: What I mean -- the language may
13 be imperfect; it must be. What I mean is where the
14 Legislature wants to withdraw county powers, which it,
15 of course, must do by law and make that withdrawal appli-
16 cable to counties which are not in the same classification
17 or to counties in the same classification, but not to all
18 of them, that it could do so for the purpose of implement-
19 ing the regional government. It would be an exception.

20 MR. CLAGETT: This comes under the section
21 dealing with powers of counties.

1 MRS. BOTHE: I don't see where it does,
2 Mr. Clagett. Here it is in conflict, I believe, with
3 11.02(b), because I think what you are contemplating
4 there is that the Legislature could enact laws which
5 would withdraw powers from particular counties which are
6 to be included in a region, but these counties might not
7 be all in the -- they might be in a classification with
8 counties where powers would not or should not be with-
9 drawn and the only point of this is that it would enable
10 the Legislature to take powers away for this one purpose
11 and not to observe the classification in doing it.

12 MR. CLAGETT: Referring to that 11.01, sub-
13 section (b), where we provide that the General Assembly
14 may provide by law; it doesn't say by general public law.
15 It says, may provide by law for multiple county civil
16 divisions.

17 MRS. BOTHE: It still doesn't provide that they
18 may take power away from counties, which is provided for
19 in 11.03.

20 THE CHAIRMAN: May I ask a question for clari-
21 fication, Mrs. Bothe? As I understand the language you

1 are now proposing for 11.02(c), you intend to broaden
2 this power of the General Assembly only to the extent of
3 saying that it could withdraw powers from counties com-
4 prising a region, without regard to the classification
5 system?

6 MRS. BOTHE: Right.

7 THE CHAIRMAN: In other words, Mr. Clagett,
8 that if the General Assembly, under Section 11.02(b),
9 withdraws from the component counties certain powers and
10 grants them to a region, that it is not subject to the
11 classification requirements of 11.03(c).

12 To use a specific example, if you had five
13 classes of counties and you created a region of Baltimore
14 City and Baltimore County, which would not be a classifi-
15 cation, the Legislature under this amendment could with-
16 draw powers from Baltimore City and Baltimore County and
17 grant them to that region.

18 MR. CLAGETT: And once it has granted them to
19 that region, then, of course, the region would exercise
20 those powers subject to the same power of withdrawal and
21 you've got the General Assembly dealing in the local

1 affairs of that region.

2 THE CHAIRMAN: Only to the extent of granting
3 or withdrawing the powers or transferring, really, the
4 powers from county to region or back from region to
5 county.

6 MR. CLAGETT: Would it be subject to that
7 restriction?

8 MRS..BOTHE: Yes.

9 THE CHAIRMAN: It is intended that it be.
10 I'm not sure this particular language would be sufficient,
11 but that is the intent.

12 MR. BROOKS: On this, some of you may still
13 have the staff memorandum that was submitted on this
14 question at the Brown Estate. I don't have a copy here
15 myself, but this was the problem addressed to and I thought
16 not only this was a serious question from the standpoint
17 that if you permit the General Assembly to withdraw powers
18 from the counties, exclusive of the classification system,
19 which is the proposal in that staff memorandum. Then it
20 is suggested that accompanying that should be a restriction
21 that such powers that are so withdrawn and vested in a

1 regional government should then only be powers which
2 could be returned to the counties if, for any reason, the
3 General Assembly withdrew them from the regional govern-
4 ments. Otherwise --

5 DR. BURDETTE: We got that in this afternoon.

6 MR. BROOKS: Pardon?

7 DR. BURDETTE: We got that in this afternoon.

8 THE CHAIRMAN: We got the intent in, not the
9 language.

10 DR. BURDETTE: That's right. It was referred
11 to the Committee on Style and put in 11.02(b).

12 THE CHAIRMAN: I don't think, Dr. Burdette,
13 that the previous action with respect to (b) goes quite
14 as far as the point that Mr. Brooks was now making. The
15 action previously with respect to (b) was simply that the
16 power would be withdrawn from the county and granted to
17 the region or withdrawn from the region and go back to the
18 County. Mr. Brooks is making the point, I think, that it
19 could only go back to the county.

20 MR. BROOKS: With a restriction it could only
21 go back to the county if the General Assembly decided to

1 withdraw it from the region, in order not to open this
2 gate, to take away, and to complete the classification
3 restriction.

4 In other words, the General Assembly could
5 take whatever powers it wanted to exercise and vest them
6 in a regional government and then withdraw it and vest it
7 in the powers they have themselves. As I mentioned a
8 while ago, also a part of this over-all question is
9 whether or not the classification system is restricted
10 to the population criterion or is open-ended. I mentioned
11 why it has to be open-ended as it is stated now.

12 On the other hand, if this other approach is
13 adopted, then there is a lot of reason why it should not
14 be open-ended and that is that if you permit a classifi-
15 cation system under this alternative which can be organized
16 any way, the General Assembly could very readily organize
17 a classification system that completely parallels whatever
18 kind of regional government structure that is established.

19 For instance, say five regions are established
20 and we permit under the classification system as many as
21 five classes, so the General Assembly therefore could

1 establish five classes under a classification system that
2 completes the parallel with the regional structure. As a
3 result, the General Assembly could enact legislation for
4 any government, regardless of the classification.

5 In other words, you have left the door completely
6 open, unless you consider both of these at the same time,
7 for the General Assembly to legislate for the regions and
8 you would have no so-called home rule for the regional
9 governments.

10 THE CHAIRMAN: So that there would be no mis-
11 understanding about it, let me state my understanding,
12 that the action previously taken with respect to Section
13 11.02(b), and what is contemplated with the suggested
14 motion making the change to 11.03(c) is that the General
15 Assembly shall have the power to transfer to a region from
16 the counties comprising the region any of the powers of
17 the counties and transfer those powers back from the
18 region to the counties from which it came.

19 It could not transfer the powers from county
20 to region and then from region to state. It goes from
21 county to region or back from region to county. Mr. Sayre?

1 MR. SAYRE: Does this, if I understand you
2 correctly, this would mean if you have a rapid transit
3 compact between two regional governments, that the state
4 has raised up from the county to the regional government,
5 it could not take over the state function as a whole
6 state function itself? Is that what you're saying?

7 THE CHAIRMAN: No, I don't think that is what
8 I am saying. It could take over anything as a state
9 function. What we are talking about is the power to
10 take over local legislation, either local for a county
11 or local for a region.

12 MR. BROOKS: By general law, it can make any
13 of these things a state function. There is no restriction
14 on that.

15 MR. CLAGETT: But it would have to be a general
16 law only.

17 MR. BROOKS: That's right.

18 THE CHAIRMAN: Dr. Burdette?

19 DR. BURDETTE: Wouldn't it be useful to get
20 at some stage, to make John Brooks' point, some such clause
21 in the Constitution, but in no case shall the Legislature

1 pass a law applicable to a region, as such.

2 THE CHAIRMAN: The purpose of my stating the
3 understanding with respect to these two motions was so
4 that the Committee on Style could put it in appropriate
5 language.

6 DR. BURDETTE: I understand that.

7 THE CHAIRMAN: Neither the mover of this motion
8 nor the mover of the previous motion is trying to phrase
9 the precise language to be used.

10 DR. BURDETTE: I am not trying to phrase the
11 language, but I'm not sure that what we've been talking
12 about so far touches John Brooks' point.

13 THE CHAIRMAN: I think it does. We're talking
14 about a transfer of powers from county to region and back
15 from region to county. It can move no other way.

16 MRS. FREEDLANDER: Mrs. Bothe added that to
17 her motion.

18 THE CHAIRMAN: Yes.

19 MR. CLAGETT: I want to be clear on one other
20 thing. What direct relationship would this have or effect
21 on 11.03(a), where the broad grant is, to the counties, not

1 denied, as they are specified and which has not been
2 transferred to another civil division?

3 MRS. BOTHE: This is in conflict with the
4 principle. The only way it can be done is where there
5 is a contemplated transfer to a region.

6 MR. CLAGETT: So it would tie in rather than
7 be restrictive.

8 MR. BROOKS: It wouldn't conflict.

9 MRS. SAYRE: It's restrictive.

10 MRS. BOTHE: The only way where actually it
11 would apply is where a county's power would be transferred
12 to a region. So, 11.03 wouldn't be affected.

13 MR. CLAGETT: I recognize my own inabilities
14 better than anyone else, I hope. Would you read that
15 once again, so I can digest it?

16 THE CHAIRMAN: The language? The language,
17 I'm afraid, is misleading, in the light of --

18 MR. CLAGETT: I don't mean to say the language
19 is that misleading. I have difficulty understanding it.

20 THE CHAIRMAN: The suggested language is at the
21 end of the first sentence of 11.03(c). Before the period

1 you would add the phrase, with the exception of the with-
2 drawal of county powers provided for in Section 11.02(b).
3 The intent of the motion is that the section be amended
4 and also that 11.02(b) be amended so as to provide the
5 full powers transferred from a county to a region and
6 can only be transferred back to the applicable counties.

7 MR. CLAGETT: I don't think there is any
8 trouble with that.

9 THE CHAIRMAN: Any further questions? The
10 motion arises on the question to amend 11.03(c) at the
11 end of the first sentence, to add the provision substan-
12 tially in the words, with the exception of the withdrawal
13 of county powers provided for in Section 11.02(b), but to
14 so amend both 11.03(c) and 11.02(b), to make it clear that
15 powers transferred from the county to a region can be
16 withdrawn from the region and transferred back again only
17 to the component counties.

18 A vote aye is a vote in favor of the motion.
19 All in favor please signify by saying aye. Contrary, no.
20 The ayes have it. So ordered. Any further discussion
21 of 11.03(c)?

1 DR. BARD: Mr. Chairman, will Mr. Brooks please
2 go back to the point he made with respect to the fact that
3 perhaps it can be based upon the population alone?

4 THE CHAIRMAN: No, the other way around, now.

5 DR. BARD: Is it? The other way around?
6 I wasn't clear.

7 MR. BROOKS: Now, the classification is
8 irrelevant to that part of this document which permits
9 the establishment of regional governments. It is not
10 necessary for any stage of the activation or the estab-
11 lishment or creation of regions or regional governments
12 and for that reason it is no longer necessary, as far as
13 that part of the document is concerned, for the criteria
14 of the establishment of classes to be anything more than
15 population.

16 DR. BURDETTE: That is what you are advocating?

17 MR. BROOKS: I say it is not necessary that it
18 be any more than that. It still could be, but it is not
19 necessary.

20 DR. BURDETTE: And it is as we have the
21 language now.

1 MR. BROOKS: Yes.

2 THE CHAIRMAN: Mr. Martineau?

3 MR. MARTINEAU: Just to clarify my own thinking,
4 is it correct that the effect of 11.03(c) implies an
5 exception for the specific grants of power to the General
6 Assembly stated in, say Section 11.01, with respect to
7 the creation, incorporation, changing, merging, dissolution
8 and the alteration of boundaries? As I understand it, the
9 General Assembly could pass a law changing the boundaries
10 of Baltimore County and Baltimore City and that this, of
11 course, would not be a general public law by its very
12 terms.

13 THE CHAIRMAN: That's correct.

14 MR. MARTINEAU: So that there is an implied
15 exception in 11.03(c), that they can adopt any general
16 public law and any other law specifically authorized by
17 the Constitution.

18 THE CHAIRMAN: That is in effect what it means,
19 yes.

20 MR. MARTINEAU: Is there any necessity to say
21 that, because we've already made an exception with respect

1 to 11.02, and I wonder if we shouldn't make it a general
2 exception covering all the specific grants --

3 THE CHAIRMAN: What you are saying is that
4 except as provided in 11.01 and 11.02, the General Assembly
5 may enact a general public law.

6 MR. MARTINEAU: Except as in this Constitution,
7 so as not to create any confusion as to the limitation
8 here and any specific grant of power, whether it's 11.01
9 or 11.02, or some place else.

10 THE CHAIRMAN: Then I think we ought to have
11 it limited somewhat to except as specifically authorized
12 in any other part of the Constitution.

13 MR. MARTINEAU: Yes, I think so.

14 THE CHAIRMAN: Any objection?

15 MR. CLAGETT: No. Would you include that in
16 this very same Subsection (c)?

17 THE CHAIRMAN: Yes.

18 MR. CLAGETT: And it would be that the General
19 Assembly may enact only public general laws, except as
20 otherwise herein provided.

21 THE CHAIRMAN: You start off (c), except as

1 otherwise specifically authorized in this Constitution,
2 the General Assembly may enact.

3 DR. WINSLOW: That would take care of both
4 situations.

5 THE CHAIRMAN: Any further questions as to (c)?
6 Let's move on to 11.04.

7 MR. CLAGETT: In 11.04, we're dealing with
8 the structure of county governments and we provide in
9 Subsection (a) that the General Assembly shall provide
10 by law for methods and procedures by which the governing
11 bodies of the counties or the voters of a non-charter
12 county by petition may enact an instrument of government
13 subject to referendum, and the General Assembly shall
14 provide by law for an instrument of government for all
15 non-charter counties, if they have failed to enact one
16 for themselves, by January 1st, of the fourth year follow-
17 ing the effective date of this Constitution.

18 We thus provide for the degree of flexibility
19 for the county to adopt a charter or other instrument of
20 government and we can think of no other instrument of
21 government that wouldn't be a charter, but we have given

1 a palatableness, insofar as the use of this word is
2 concerned, rather than by the use of the word charter,
3 by the action of its own governing body or by a petition
4 of the majority of the voters in that county.

5 THE CHAIRMAN: Dr. Burdette?

6 DR. BURDETTE: I have two questions. I should
7 like to read this Section (a) as if there were in the
8 second line a comma after governing body and in the third
9 line a comma after petition, so that it doesn't say the
10 governing body has to get a petition and, so far as I
11 know, that is the intent of the Committee, and I have
12 another question --

13 THE CHAIRMAN: I think this is the intent,
14 is it not, Mr. Clagett?

15 MR. CLAGETT: It is the intent.

16 THE CHAIRMAN: Comma after body and a comma
17 after petition.

18 DR. BURDETTE: That makes it clearer. The other
19 question I have is more a matter of substance. I wonder
20 why we couldn't allow the General Assembly to provide for
21 more than one instrument of government or optional

1 instruments -- I'm not phrasing this, I'm just giving
2 the intention -- as we do now with regard to -- we leave
3 some option to municipalities. Can this be strait-jacketed
4 by the General Assembly?

5 MR. CLAGETT: Does this strait-jacket the
6 General Assembly, if we provide methods and procedures
7 and those methods and procedures can include optional
8 plans?

9 DR. BURDETTE: I'm not so sure they can after
10 four years.

11 MR. CLAGETT: After four years, they won't
12 have to.

13 DR. BURDETTE: I'm not even sure.

14 MR. CLAGETT: Because then it will have become
15 effected and all counties will have an instrument of
16 government.

17 THE CHAIRMAN: I don't think you're following
18 Dr. Burdette's point, Mr. Clagett. What he is asking is
19 whether after four years, or at the end of four years, the
20 Legislature could not have provided several forms of
21 instruments of government that non-charter counties would

1 fall into. I think the answer to it is that you would
2 have to provide, if you did that, some mechanics to the
3 county to adopt one or another.

4 MR. CLAGETT: Then there would be another delay
5 for a two-year period, at least -- another four-year period.

6 THE CHAIRMAN: The concept Dr. Burdette makes
7 is that this is automatic and that any non-charter county
8 that hasn't acted within a four-year period --

9 DR. BURDETTE: And (c) arranges it that the
10 county could proceed to change that legislative body by
11 its process of amendments.

12 MR. CLAGETT: And it is protected, so far as
13 the county is concerned.

14 DR. BURDETTE: All right.

15 THE CHAIRMAN: Any further questions as to (a)?
16 Mr. Martineau?

17 MR. MARTINEAU: I'm afraid this is a question
18 just brought about by the last amendment which I proposed.
19 We say here, shall provide by law for methods and proce-
20 dures by which the governing body -- I don't know that
21 this would mean they could adopt a separate procedure for

1 each individual county and, because of the last amendment
2 that we just adopted, are we now forced into drawing a
3 distinction between public general law or specifying
4 public general law when we mean that and stating by law,
5 when we don't mean that? I would think, in view of the
6 amendment we just adopted, the General Assembly in this
7 section as it now reads could adopt a different procedure
8 for each individual county, which I think would be important.

9 THE CHAIRMAN: It seems to me that earlier,
10 and I'm not sure which meeting it was, a similar question
11 arose and I thought we had decided that we would use the
12 phrase public general law when we meant that. I'm not
13 clear about that. Does anybody have a different recol-
14 lection? Certainly, there is no harm in doing it here,
15 is there, Mr. Clagett?

16 MR. CLAGETT: No, there would be no harm.
17 I don't think it's necessary, frankly, because I think
18 you're dealing with counties and you've got the restriction
19 in 11.03(c).

20 THE CHAIRMAN: But his trouble is with the
21 amendment he made with respect to 11.03(c), maybe it would

1 provide the loophole --

2 MR. CLAGETT: Except as herein provided.
3 I think maybe we better put in general public law.

4 THE CHAIRMAN: Any objection?

5 MR. BROOKS: Where we say governing body in
6 this section, do we mean legislating body again in con-
7 formity with prior sections?

8 MR. CLAGETT: Yes.

9 DR. BURDETTE: You want to put in public general
10 law.

11 MR. CLAGETT: Here again, I think we are
12 including here the acts of both the executive and the
13 legislative and by governing body we say that in the sense
14 of meaning both the legislative and executive, and we don't
15 say legislative body, as we did above. Therefore, it
16 would include both, similar to the present Article XI(a).

17 MR. HAILE: Couldn't we put governmental bodies,
18 which includes the singular and non-charter counties which
19 also includes the singular?

20 MR. CLAGETT: I don't see any objection to that.
21 That's a matter of style.

1 DR. BURDETTE: It seems to me, as I read it
2 now, it would also be wise to say, and procedures by
3 which either the governing body or the voters, so that
4 it doesn't leave -- because our intent is to allow either
5 the governing body or the voters to generate this and
6 either way you read it, the Legislature could take the
7 position that they have a choice of fixing upon the
8 governing body or fixing upon the voters as the only
9 method, while we intended that either method must be
10 followed.

11 MR. BROOKS: You accomplished that with your
12 commas, didn't you?

13 DR. BURDETTE: No, I put the commas in, but I
14 realize that simply makes that an alternative. The first
15 one meant either one had to do it by petition and the
16 other made an alternative. If you take the commas out
17 and say by which either the governing bodies or the voters
18 of a county --

19 THE CHAIRMAN: I think the point is well taken.

20 MR. CLAGETT: I would agree with it. I think
21 it makes it clear without any question. So, after the

1 word body strike the comma and after the word petition.

2 THE CHAIRMAN: No, you don't take the comma
3 out.

4 MR. CLAGETT: Either or certainly doesn't need
5 commas.

6 THE CHAIRMAN: All right.

7 MR. CLAGETT: And you take the comma after the
8 word petition out in line 3.

9 THE CHAIRMAN: I disagree. I think if you take
10 the commas out, you are still left with the same problem
11 that Dr. Burdette first mentioned, and that is the govern-
12 ing body would have to act by petition. You don't mean
13 that. You mean either the governing body or the voters
14 of a non-charter county by petition.

15 MR. CLAGETT: Let's put them in, if there's
16 any question.

17 MR. MARTINEAU: Why not say the county by
18 public local law?

19 THE CHAIRMAN: I would prefer that, or the
20 voters of non-charter county by petition.

21 MRS. BOTHE: Will somebody read the whole

1 sentence?

2 MR. CLAGETT: It will read now, the General
3 Assembly shall provide by public general law for methods
4 and --

5 THE CHAIRMAN: You don't need the for.

6 MR. CLAGETT: By general public law methods
7 and procedures by which either the governing body or the
8 voters of a non-charter county by petition may enact an
9 instrument of government subject to ratification, and no
10 more commas in there.

11 THE CHAIRMAN: Don't you want, in addition to
12 the word enact, don't you want the word alter or change;
13 may enact or change?

14 MR. CLAGETT: We provide for an amendment down
15 here in Subsection (c). I don't think it will be necessary.

16 THE CHAIRMAN: All right. Now, in the next
17 sentence, the General Assembly shall provide by law --
18 here again, you mean public general law. You don't need
19 the word for.

20 MR. CLAGETT: Let's put general law.

21 DR. BURDETTE: Mr. Chairman, it seems to me the

1 word for does leave the Legislature more alternatives.
2 It can either write the law or prescribe the means that
3 somebody else --

4 THE CHAIRMAN: The whole point here is that
5 the Legislature shall write it and it is self-operative,
6 if the county doesn't do it. Any further questions?

7 JUDGE ADKINS: I have two questions with
8 relation to the last sentence. First of all, is it per-
9 fectly clear that a county which has enacted a provision
10 of government pursuant to the provisions in Paragraph 1
11 is a charter county? It isn't clear to me.

12 THE CHAIRMAN: I lost part of what you said.
13 Pursuant to the provisions of what?

14 JUDGE ADKINS: If a county at the date of the
15 adoption of this Constitution does not have a charter
16 form of government, thereafter adopts what this document
17 calls an instrument of government, is it then a charter
18 county? If so, why is it?

19 MR. CLAGETT: I would answer that in the
20 affirmative, in that/ⁱⁿany instrument of government, there
21 would be a Constitution or there would be a charter and

1 there is no difference between Constitution and charter.

2 MR. HOFF: What would you have done with the
3 code county?

4 MR. CLAGETT: That would be different. That
5 would be a code.

6 JUDGE ADKINS: That raises my point. You
7 provide that the instrument that the General Assembly
8 shall adopt shall become effective for all non-charter
9 counties. I think this is sort of a confusion and I think
10 that the word non-charter ought to be made more specific,
11 because if you have a code county, for example, you don't
12 want to have the instrument of government replace the
13 code county's provision of government.

14 THE CHAIRMAN: I'm glad you made that point
15 because I thought that is precisely what the Committee
16 intended. I thought what was intended here was within
17 the four years any county could adopt a charter form of
18 government. If it did not, then all remaining counties
19 which did not adopt a charter form automatically took
20 whatever form of government the Legislature provided,
21 which might be County Commissioners or might be anything.

1 JUDGE ADKINS: You are saying that the instru-
2 ment of government provided for here which can be volun-
3 tarily adopted by the end of the four years is a charter.
4 That was really the source of my question.

5 THE CHAIRMAN: It could be, but isn't necessarily.

6 JUDGE ADKINS: And if they adopt an instrument
7 of government which is not a charter, then that which they
8 do in the four-year period is a nullity and it has to then
9 be replaced by the General Assembly law. Is that the
10 theory? That has not been my understanding.

11 THE CHAIRMAN: Let's have Mr. Clagett's
12 statement.

13 MR. CLAGETT: I would say an instrument of
14 government is a charter. A code is not a charter. It is
15 thought here that the experiment of a code county is one
16 which has never been tried, that we do feel and the
17 Committee is unanimous in its thinking, that the best
18 form of structure for a county to effectively exercise
19 the home rule power is by means of a charter.

20 We don't necessarily mean that that is the
21 only way it can be done. We do mean that it is the most

1 effective way to be done. So, the thinking of the
2 Committee here is that by the end of the four years, the
3 most effective way will be this way. So that if they have
4 followed the experiment of the code county over the four-
5 year period, then a form or instrument of government
6 provided by the Legislature would and could replace or
7 shall replace the code form.

8 JUDGE ADKINS: Well, I don't care to labor this,
9 if I'm the only one who has the problem, because I won't
10 be dealing with it too much longer, but it does seem to
11 me by using the term instrument of government in the first
12 sentence and non-charter county in the second sentence,
13 you are creating an impossible amount of confusion as to
14 what may happen in the first four years. I think you
15 either ought to call it your instrument of government or
16 your non-charter county, rather than call it one thing in
17 one sentence and another thing in another sentence, and I
18 think this mixing of the two languages only tends to add
19 to the confusion.

20 MR. CLAGETT: I think maybe you've got something
21 there that we have been hunting for. The General Assembly

1 shall provide by public general law an instrument of
2 government for all counties which have not adopted an
3 instrument of government by January 1 of the fourth year
4 following the effective date of this Constitution. What
5 is the matter with that, John?

6 THE CHAIRMAN: This is a change in what I
7 thought you said before. Let's go back to the fundamentals.
8 What does the Committee contemplate in the four-year period,
9 that counties must adopt a charter form of government or
10 take the legislative form, or are the counties to be
11 permitted to adopt a form of government other than a
12 charter form of government?

13 MR. CLAGETT: The Committee here contemplates
14 that a charter form of government shall be adopted after
15 the fourth year, and we did so because we were unable to
16 really conceive of an effective way of handling the home
17 rule powers otherwise.

18 THE CHAIRMAN: What you are saying then, if
19 I understand you, that within four years the county has
20 the right to adopt a form of government, but it must be a
21 charter form of government. If it doesn't, then at the

1 end of the four years, it takes whatever the Legislature
2 provides. Is that what you are saying?

3 MR. CLAGETT: Right.

4 DR. BURDETTE: Now, what do we mean by charter?
5 If we mean by charter the construction set forth in the
6 present 11(a), I don't see anything in this Constitution
7 that requires that construction. Therefore, if you want
8 to call it a charter, the difficulty right away is that
9 it gives the idea that it has in 11(a). In other words,
10 I was not in on the last discussion at the Committee
11 which was somewhat informal at the Brown Estate, that the
12 governing body had to be called a County Council, which
13 is the provision under 11(a).

14 MR. BROOKS: It doesn't have to be called --

15 THE CHAIRMAN: I don't know that the term
16 charter county carries all of the provisions of 11(a).

17 DR. BURDETTE: If they are synonymous, but then
18 I revert immediately to Judge Adkins' point, if they are
19 synonymous, why not use similar language.

20 THE CHAIRMAN: It seems to me, in the light of
21 Mr. Clagett's last statement, in the fourth line, the word

1 ought to be charter instead of instrument of government.

2 MR. CLAGETT: No, we don't want to do that.
3 We have been over that until hell has frozen over it.

4 MRS. BOTHE: Why?

5 MR. CASE: He's going to tell you. Just give
6 him time.

7 MR. CLAGETT: Let's not go back in to that one
8 because that is exactly what Mrs. Freedlander has been
9 asking and finally got the answer.

10 MR. SCANLAN: I think the Committee is causing
11 this mish-mash. If you mean charter, say that, or if you
12 mean code county, say that. Define the instrument, so we
13 know what you mean.

14 THE CHAIRMAN: What does the Committee intend
15 shall be done by the counties within the first four years?

16 MR. CLAGETT: They shall exercise the broad
17 powers granted under this Constitution.

18 THE CHAIRMAN: I mean so far as adopting the
19 form of government is concerned.

20 MR. CLAGETT: And shall certainly direct them-
21 selves toward adopting an instrument of government to

1 handle those powers.

2 THE CHAIRMAN: But it doesn't have to be a
3 charter?

4 MR. CLAGETT: We contemplate that instrument
5 of government is synonymous with charter.

6 MR. SCANLAN: The more he explains it, the
7 more I don't understand it.

8 MR. CLAGETT: Let's go ahead. We feel that
9 what we are doing is giving a sugar coat to the pill
10 "charter" and it is solely for that reason that we use
11 the words instrument of government, to make the pill more
12 palatable to those counties. Whereas, in Prince George's,
13 specifically, if we used the word charter, we are building
14 up a body of opposition which is not necessary for us to
15 do if we can simply use a phrase that sugar-coats the pill.

16 Now, if you are looking at a gun in the face
17 and somebody is behind the gun who is going to pull the
18 trigger, what do you do? You put your hands up in the air
19 and you say, I'll come back another day. When you've got
20 a gun, you can shoot him first. But here, insofar as
21 Prince George's County is concerned, over a period of now

1 nearly 12 years, we have fought the battle of charter and
2 it has a label which is such that you have a body of
3 opposition the moment you use the word.

4 Now, recognizing that as a fact and recognizing
5 that Prince George's County is a sizable county with a
6 substantial vote which could very adversely affect the
7 whole of our efforts here, we have given them the sugar-
8 coated pill and we ask that you go along with us, recog-
9 nizing that experience and leaving it there, but it is
10 synonymous and meant to be synonymous with charter.

11 THE CHAIRMAN: I think it breeds confusion.
12 Mrs. Freedlander?

13 MRS. FREEDLANDER: Mr. Chairman, for over a
14 year I've fought the lone battle on the Committee, as to
15 what the meaning of the word charter is. I cannot see
16 why it is a dirty word, but evidently it is, and I think
17 the onus is on the Commission to clear the air. There are
18 members of the Committee who feel that if the Commission
19 feels it should be called what it is, the Commission
20 should clear the air. I think we should make a group
21 decision and decide whether to call a charter a charter.

1 THE CHAIRMAN: I am more confused than in just
2 a matter of terminology. What I am confused about, in
3 spite of the explanations by Mr. Clagett, is what does
4 the Committee intend that a county of any class shall do
5 within the first four years? Does a county have to take
6 any action? Does Prince George's County have to do any-
7 thing under the provision of this section?

8 MR. CLAGETT: No, they don't.

9 THE CHAIRMAN: Why don't they?

10 MR. CLAGETT: The answer is they want to live
11 in contentment for four more years.

12 THE CHAIRMAN: After the four years, does
13 Prince George's County, under your understanding, have to
14 do anything?

15 MR. CLAGETT: No, because by January 1st of
16 the fourth year, a charter drawn by the General Assembly
17 will then be imposed upon Prince George's County and it
18 will have a charter.

19 THE CHAIRMAN: In other words, you are saying
20 that you want to abolish the County Commissioner method
21 of operating county governments after four years?

1 MR. CLAGETT: That is correct. We do not
2 believe that the county -- let's get this clear. We do
3 not believe that the County Commissioner form of govern-
4 ment, with the exercise of both legislative and executive
5 power, can effectively operate in the best interest of the
6 people and utilize the broad grant of power.

7 Number one, it could provide under the exercise
8 of the broad grant of power that the next election of
9 County Commissioners shall be 20 years from now and there-
10 fore the present County Commissioners shall stay in
11 authority for the next 20 years; but they might be young
12 men and might make it 40 years. Now, that is entirely
13 possible, unless you have an instrument of government or
14 a charter, and I'm using the words synonymously, now,
15 which will provide for regular election, which will provide
16 in other ways for the orderly operation of the government
17 of the county.

18 We do not believe, and it's been a long fought
19 battle, we do not believe that without a charter the broad
20 grant of power can be as effectively utilized than with a
21 charter and we are aiming now for the ultimate rather than

1 merely for the existing.

2 THE CHAIRMAN: Would your purpose be accom-
3 plished if you didn't use this nasty word charter and
4 used instrument of government throughout?

5 MR. CLAGETT: Yes.

6 THE CHAIRMAN: I would like to let Dr. Burdette
7 address himself to that, because he and I are in accord
8 to the extent that I have said what I said, with the
9 exception of maybe -- no, we're in accord all the way
10 through.

11 DR. BURDETTE: Except on one point. My philos-
12 ophy on this, as I expressed it to the Committee, has been
13 that we ought to leave to the county within reasonable
14 Constitutional process real home rule for the construction
15 of a county government, that the State of Maryland does
16 not need to decide whether or not we have an elected
17 Executive or a Council, in the Council Manager form, or
18 in the County Commissioner form, and in still another form
19 which might be included as is precluded by 11(a), and that
20 is that the executive should be a part of the legislative
21 body at the same time as the executive.

1 I am not trying to speak for one or the other,
2 but leave it to the county. If we're going to say that
3 the county has to have an instrument of government, that
4 permits any kind of instrument of government, and indeed --
5 if they don't get any instrument of government, Legislature
6 will give them one, but then they can amend it and they
7 can amend it in the way I would presume that the Legis-
8 lature, by providing the methods of amendment, would
9 allow them to amend to that form which they find compatible.
10 So, as you say, if Garrett County wanted to have a Com-
11 missioner form of government, whether the rest of the
12 State thought it was better or not, it is compatible with
13 home rule.

14 THE CHAIRMAN: And against the term of 20 years
15 or 40 years, it is a requirement that that instrument be
16 ratified by the voters of the county.

17 DR. BURDETTE: Yes.

18 THE CHAIRMAN: So what you are saying is you
19 are not seeking to abolish the Commissioner form of govern-
20 ment. You are just trying to avoid using the dirty word.

21 MR. CLAGETT: Yes.

1 JUDGE ADKINS: May I propose an amendment?

2 To the last sentence it can be added, the General Assembly
3 shall provide by law for an instrument of government which
4 shall become effective for all counties which on January
5 1st of the fourth year following the effective date of
6 this Constitution have not previously adopted a local
7 instrument of government which was submitted to and
8 approved by a majority vote of its people.

9 THE CHAIRMAN: Do you get the sense of it,
10 Mr. Clagett? He has taken away the phrase non-charter
11 from the third line at the end and substituted the language,
12 and I don't have the exact language.

13 JUDGE ADKINS: Have not previously adopted a
14 local instrument of government which has been submitted
15 to and approved by a majority vote of its people.

16 MR. CLAGETT: Well, appreciating the fact that
17 Judge Adkins was one of the composers of just exactly
18 what he is now amending, I think he has license to do so.
19 Let me hear it once again.

20 THE CHAIRMAN: Can you give it to us slowly,
21 Dale?

1 JUDGE ADKINS: The General Assembly shall
2 provide by law --

3 THE CHAIRMAN: Public general law.

4 JUDGE ADKINS: All right, shall provide by
5 public general law for an instrument of government which
6 shall become effective for all counties which, on January
7 1 of the fourth year following the effective date of this
8 Constitution, and here we insert new language, have not
9 previously adopted the local instrument of government
10 which has been submitted to and approved by a majority
11 vote of its people.

12 THE CHAIRMAN: Is there a second?

13 MR. MITCHELL: Second it.

14 MR. CLAGETT: What happens in the period of
15 four years?

16 JUDGE ADKINS: Exactly what would have happened
17 under your language.

18 MR. CLAGETT: Well, you would still have Sub-
19 section (b).

20 JUDGE ADKINS: I don't know. We haven't gotten
21 to that yet.

1 THE CHAIRMAN: Give me the last part of that --
2 not previously adopted a local instrument of government,
3 what?

4 JUDGE ADKINS: Which has been submitted to and
5 approved by a majority vote of its people. I said people,
6 but Dr. Burdette suggested voters.

7 DR. BURDETTE: Qualified voters voting on their
8 own.

9 JUDGE ADKINS: By a vote of the qualified
10 voters voting on their own.

11 MR. SAYRE: If you said instrument of home rule
12 government --

13 JUDGE ADKINS: I'm just trying to maintain the
14 language they used in the first sentence, that's all.

15 DR. BURDETTE: I have no objection to home rule.

16 MR. SAYRE: Isn't that what we're after?

17 THE CHAIRMAN: Mr. Bond?

18 MR. BOND: May I ask Judge Adkins, under this
19 proposal, within the four-year period, couldn't just a
20 County Commissioner form of government be presented to
21 the people and be adopted?

1 JUDGE ADKINS: I was told by at least one
2 member of the Committee that that was what the Committee
3 intended. Yes, I think they could, under this language.

4 THE CHAIRMAN: Any further discussion?

5 MR. MARTINEAU: I have a question. Does the
6 phrase an instrument of government mean that there shall
7 be only one or can they provide a number of them?

8 THE CHAIRMAN: Who?

9 MR. MARTINEAU: The General Assembly shall
10 provide by law for an instrument of government. Is this
11 uniform for all counties that have not theretofore adopted --

12 THE CHAIRMAN: Yes. That was the answer given
13 previously, that this is a self-operative provision, that
14 every county which hasn't enacted its own form automat-
15 ically takes this one form.

16 MR. MARTINEAU: It is just one? You can't
17 take --

18 THE CHAIRMAN: Yes, because you have to have
19 county action to choose.

20 MR. MARTINEAU: They could adopt Plan A for
21 county --

1 MR. CLAGETT: You would have to do it subject
2 to referendum.

3 MR. MARTINEAU: Why?

4 MR. CLAGETT: Well, because we feel that is
5 inherent in the adoption of any charter or instrument of
6 government.

7 THE CHAIRMAN: Mrs. Bothe?

8 MRS. BOTHE: I was wondering whether this
9 language, whether it is yours or Judge Adkins', would
10 adequately guarantee that a county would adopt an instru-
11 ment of government adequate to home rule powers, because
12 it seems to me you have a loophole here in which a county
13 that adopted any kind of government could say, we'll have
14 a dog catcher --

15 MR. CLAGETT: It would be put into effect by
16 the very persons who are being governed by that government.
17 May I say, what you are saying right now we tried to do,
18 and who is going to determine what is suitable?

19 MR. SAYRE: The people ought to.

20 MR. CLAGETT: They can do that by this method
21 here.

1 MRS. BOTHE: Well, in your Prince George's
2 County where your people are so sore at the prospect of
3 a charter, suppose some person creates some instrument
4 of inadequate government within the four-year period --

5 THE CHAIRMAN: It has to be adopted by the
6 people.

7 MRS. BOTHE: The people don't want a charter.

8 MR. CLAGETT: They are going to get it, anyway.
9 That's the point. There are only 37 charter counties in
10 the entire United States. Four of those 37 are right here
11 in Maryland. So, it hasn't been the most popular form of
12 government. However, all authorities agree that it is the
13 most effective structure of government where you are going
14 to use such broad powers as we have provided here.

15 Now, it is in order to give those broad powers
16 that we are going this additional step and it is a pretty
17 difficult step to take. It is one that I think we are
18 going to have difficulty enough in selling it, but I think
19 it can be accomplished. The last vote in Prince George's
20 County when the charter was defeated was a close one.
21 Before that it was a substantial majority. The movement

1 in Prince George's County is in the direction of acceptance
2 of the idea.

3 MRS. BOTHE: May I raise a question of a
4 hiatus that might be created if something less than a
5 charter or instrument were created during the four-year
6 period and then the charter provided by the Legislature
7 wouldn't be operative.

8 MR. CLAGETT: Say that again.

9 THE CHAIRMAN: But if it is a less adequate
10 one, it is one that the people of the county have adopted.

11 MRS. BOTHE: Perhaps.

12 THE CHAIRMAN: Not perhaps. They will have.
13 Otherwise, they will not have complied with this section.

14 MR. CASE: She's talking about the four-year
15 period.

16 THE CHAIRMAN: That's right, within the four-
17 year period, the people have to adopt it.

18 MR. CASE: Suppose they don't do anything?

19 THE CHAIRMAN: Then the charter adopted by the
20 Legislature becomes effective.

21 MR. CASE: That's right, but at the end of the

1 four-year period, that's what she's talking about.

2 MRS. BOTHE: I was concerned that any kind of
3 an instrument that was adopted would preclude the imposi-
4 tion of the State's charter.

5 THE CHAIRMAN: Mr. Scanlan?

6 MR. SCANLAN: I have no problem with what
7 Judge Adkins has suggested as an amendment. There is a
8 lucidity which I find lacking in the first part. Is it
9 the consensus of this Commission, I think I have the
10 Committees' views, that the phrase instrument of govern-
11 ment used in the first part means charter and only charter
12 or could it mean something less than charter? Could it
13 mean code?

14 Suppose the General Assembly provided for a
15 code county procedure and that was approved by the voters
16 in a local --

17 THE CHAIRMAN: When you say code county, you
18 don't provide a form of government. You would have to
19 have some kind of an instrument providing a form of govern-
20 ment.

21 MR. SCANLAN: But it would be less than charter.

1 THE CHAIRMAN: That's right, it could be a
2 County Commissioners' form.

3 MR. SCANLAN: This is a question of substance
4 the Commission passed upon and I guess maybe I was asleep
5 or not there. Has it passed on this point?

6 THE CHAIRMAN: No, I don't think it has passed
7 on it, except inferentially, but as I understood the
8 previous discussion and the purpose behind this motion,
9 if the people of the county want a commissioner form of
10 government, they may have it. If they want a form of
11 government in which there is one person to exercise the
12 powers of government, both legislative and executive, they
13 can have it. If they want to have an elaborate charter,
14 they can have that, but they must make up their minds to
15 do something by popular referendum within the four-year
16 period.

17 DR. BURDETTE: May I add under (c), which
18 hasn't been read yet, if they get an inadequate government,
19 they can get up a petition and attempt to make it adequate,
20 bring it to the voters. That is, the county governing body
21 cannot stop the voters, as I understand (c)'s intent, from

1 proposing an amendment.

2 JUDGE ADKINS: On that comment you made, I
3 don't think -- it certainly was not intended by my amend-
4 ment. You said must act within the four-year period.
5 I don't conceive that to be the case. Counties which have
6 heretofore enacted a charter form of government, as, for
7 example, my own county of Wicomico, would not have to
8 resubmit that within the four-year period in order to be
9 within the exemption. They must have done it prior to the
10 four-year expiration after the adoption of this Constitution.

11 THE CHAIRMAN: That's correct.

12 MR. SAYRE: I have a problem which maybe you
13 can clarify, Judge. Are we allowing the counties to have
14 all powers not otherwise delegated? Now, I'm not clear
15 from your language that this Constitutional form of
16 government that is required for all counties that had not
17 taken action prior to January 1, I'm not clear that the
18 General Assembly incorporates all the powers necessary to
19 have those reserve powers.

20 THE CHAIRMAN: You will have to say that again.

21 MR. SAYRE: Does this language submitted require

1 the General Assembly to come up with an instrument of
2 government that grants all of the powers necessary to
3 home rule? Maybe I'm confused. Doesn't home rule mean
4 you have all powers not otherwise denied?

5 MR. CLAGETT: Except by the charter and by the
6 General Assembly by general public law or by the Constitu-
7 tion.

8 MR. SAYRE: If you deny powers in your charter
9 no one else is exercising, where are you?

10 MR. CLAGETT: You better go ahead and amend it
11 under Subsection (c), and go ahead and get it.

12 THE CHAIRMAN: May I assume the prerogative
13 of a Chairman and at the moment the provider of things to
14 eat and say we have to adjourn if we are not going to have
15 to make new arrangements to take the place of other new
16 arrangements.

17 (At this point there was a dinner recess.)
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CONSTITUTIONAL CONVENTION COMMISSION

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EVENING SESSION

November 21, 1966 - 7:30 p.m.

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University of Maryland Law School, Baltimore, Maryland

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Appearances as heretofore noted.

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Reported by:

C. J. Hunt

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1 THE CHAIRMAN: Can we come to order, please?

2 We will resume consideration of Section 11.04.

3 The matter before you is the motion of Judge Adkins to
4 amend Section 11.04(a). The Section as it would read,
5 if the motion is adopted, is as follows:

6 The General Assembly shall provide by public
7 general law methods and procedures by which either the
8 County by public local law or the voters of a non-charter
9 County by petition, may enact an instrument of government
10 subject to ratification by majority vote of the voters of
11 the County voting thereon. The General Assembly shall
12 provide by public general law an instrument of government
13 which shall become effective for all Counties existing
14 on January 1 of the fourth year following the effective
15 date of this Constitution, which have not previously
16 adopted a local instrument of government which has been
17 submitted to and approved by a majority vote of the
18 qualified voters voting thereon.

19 I suggest that in the light of that amendment
20 it might be desirable now, Mr. Claggett, to strike out
21 the words, non-charter, in the third line, as removing

1 some further ambiguity and not hurting the sense.

2 MR. CLAGETT: Where is the third line?

3 THE CHAIRMAN: The third line of 11.04(a).

4 MRS. FREEDLANDER: The third line from the
5 bottom.

6 THE CHAIRMAN: Top third line, voters of a
7 non-charter County by petition can read, Voters of a
8 County by petition.

9 MR. CLAGETT: I would agree with that.

10 THE CHAIRMAN: Do you accept that as part of
11 your amendment, Judge Adkins?

12 JUDGE ADKINS: May I take a minute to look at
13 it?

14 MRS. BOTHE: What about the Counties where
15 there has already been a charter adopted?

16 JUDGE ADKINS: That is the question that bothers
17 me.

18 MR. HAILE: The General Assembly can take care
19 of that situation.

20 JUDGE ADKINS: I think the implication would
21 be if you strike out non-charter, I have no brief for that

1 language, other language might be inserted, but I think
2 Mrs. Bothe's point is well taken, then you would imply
3 at least all Counties now having a charter form of govern-
4 ment would have to resubmit the matters to the voters.

5 THE CHAIRMAN: Not would have to, could.

6 JUDGE ADKINS: If they didn't, they would risk
7 the danger.

8 THE CHAIRMAN: Not under the language that you
9 propose, because you were careful to avoid that pitfall,
10 were you not?

11 JUDGE ADKINS: I tried to be. All right. I
12 will accept it.

13 DR. BURDETTE: We should make it clear somewhere
14 that those who have instruments of government are not
15 affected.

16 JUDGE ADKINS: I think we have done that.

17 MR. CLAGETT: Let's take the movement right
18 now that is on in Montgomery County, where, as I understand
19 it, they may go to a different form of executive setup.
20 Wouldn't this be a golden opportunity for them to go ahead
21 and accomplish whatever change they want to accomplish?

1 DR. BURDETTE: Nothing prohibits them.

2 MR. HAILE: They can do it now.

3 DR. BURDETTE: Indeed, they put it on referen-
4 dum, and it was defeated.

5 THE CHAIRMAN: We are not getting this in the
6 record very well when you jump back and forth. Is there
7 any objection to deletion of the words, non-charter,
8 in the third line?

9 JUDGE ADKINS: I would accept the amendment,
10 Mr. Chairman.

11 THE CHAIRMAN: Is there further discussion of
12 the amendment?

13 MR. SAYRE: I have a question.

14 THE CHAIRMAN: Mr. Sayre?

15 MR. SAYRE: If they haven't adopted some form
16 of government, is that what we are talking about prior
17 to January 1 four years hence? Is that what we are saying?

18 JUDTE ADKINS: I would assume the Chair's amend-
19 ment would permit any County not having previously adopted
20 charter government to enact an instrument government here-
21 after, or would permit any County which has heretofore

1 adopted charter government to change its form of govern-
2 ment within the four-year period and still qualify under
3 paragraph, under sentence one of the (a) paragraph.

4 THE CHAIRMAN: I think so.

5 MR. SAYRE: After four-year period, you
6 are going to have an instrument submitted to the people,
7 is that right?

8 JUDGE ADKINS: Not after the four-year period
9 you wouldn't have it submitted to the people. I assume
10 the right of amendment would be inherent in the people,
11 but the instrument would become effective at the end of
12 four years if they had not previously voted on it, the
13 charter which the General Assembly proposes.

14 MR. SAYRE: Then you haven't submitted to
15 referendum?

16 JUDGE ADKINS: No.

17 MR. SAYRE: It becomes --

18 THE CHAIRMAN: That is it. That is the black-
19 jack.

20 JUDGE ADKINS: A take-it-or-leave-it concept.

21 MR. HAILE: The question arises, it says the

1 General Assembly shall provide by public general law.
2 Shouldn't we say, at its first session after the adoption
3 of this Constitution, so that it will do it promptly?
4 It may delay the matter.

5 THE CHAIRMAN: Is there any necessity to make
6 them do it at the first session?

7 MR. HAILE: Unless they do it, I don't know
8 what procedure the Counties by public local law would
9 follow or the voters by petition. They wouldn't have
10 any procedure to follow.

11 THE CHAIRMAN: You are talking about the
12 first sentence. I was thinking of the second sentence.
13 I think your point is well taken. Do you agree,
14 Mr. Clagett?

15 MR. CLAGETT: I think so. I think it adds a
16 degree of impetus to it.

17 THE CHAIRMAN: Then you would start the sen-
18 tence by the phrase, at its first session following
19 the adoption of this Constitution, the General Assembly?

20 MR. CLAGETT: Yes.

21 THE CHAIRMAN: Any objection to that, Judge?

1 JUDGE ADKINS: If you are embodying that as
2 part of my motion.

3 THE CHAIRMAN: I am, to save time. Is it
4 acceptable?

5 Judge Adkins?

6 JUDGE ADKINS: Surely.

7 THE CHAIRMAN: Mrs. Freedlander?

8 MRS. FREEDLANDER: Custer's Last Stand. Is
9 it in order to make a motion to move that we replace
10 the words, instrument of government, with the word,
11 charter, and see what that looks like?

12 THE CHAIRMAN: Move it as a substitute.

13 MRS. FREEDLANDER: I so move.

14 THE CHAIRMAN: Or amendment of the motion
15 would be better. You move to amend Judge Adkins' motion
16 by substituting the word, charter, for the words, instru-
17 ment of government, wherever they appear in the Section.
18 Is that it?

19 MRS. FREEDLANDER: Yes.

20 THE CHAIRMAN: Is there a second?

21 MR. GENTRY: Second.

1 THE CHAIRMAN: Discussion.

2 MRS. FREEDLANDER: We have been talking,
3 using the words, form of government, to signify charter,
4 and I think there is a difference. A form of government
5 could be a County Commissioner form of government or a
6 County Manager form of government or County Council form
7 of government. We are talking here about a framework
8 of government, the same as we are sitting here as people
9 preparing a Constitution, and we have a policy up to now
10 of saying, calling things what they are, rather than beating
11 around the bush. I think this instrument of government
12 is a vague phrase. I understand the political implica-
13 tions of it. I don't think it will be understandable
14 by the Constitution makers nor by the legislators if we
15 continue using words that are deliberately vague and do
16 not state what we really mean, that sometime soon all
17 the Counties should have a charter form of government,
18 a charter, not a charter form, a charter government, and
19 the form can be of their own free will. Therefore, I
20 think we should use charter instead of instrument of
21 government.

1 THE CHAIRMAN: Let me ask you, because I
2 personally would go along with you partway, but not all
3 the way. Are you using charter simply as a better term
4 than instrument of government, or are you using it as
5 something to preclude County Commissioner form of govern-
6 ment, for instance?

7 MRS. FREEDLANDER: Not to preclude. You could
8 have a County Commissioner if it is within the charter,
9 and if this is what the people want, if they want County
10 Commissioner.

11 THE CHAIRMAN: Wouldn't it be better then to
12 say instead of the phrase, instrument of government,
13 something like, charter, or other form of government?

14 MRS. FREEDLANDER: Charter is not a form.
15 Charter is the framework as a Constitution is a framework.
16 You could have a form that would be an executive type
17 government, cabinet type government like the British
18 or parliamentary form, you could have a presidential
19 form. The form is what you decide as a people. Frame-
20 work is your charter, is your Constitution, is your
21 By-laws or call it what you will.

1 THE CHAIRMAN: Aren't you afraid that charter
2 in its popular meaning might be understood to mean
3 something that would preclude a County Commissioner form
4 of government?

5 MRS. FREEDLANDER: I don't think so. I think
6 we can explain this. I think it is more understandable,
7 both to those who favor it as well as those opposed to
8 it. I think basically we all agree that these governments,
9 these County governments in order to be able to accept
10 all their Home Rule powers we are giving to them have to
11 have framework, charter, not an instrument, but frame-
12 work and within this framework, they can provide for
13 whatever form of government they want.

14 THE CHAIRMAN: Further discussion?

15 DR. BURDETTE: Would you accept the term,
16 written framework, in lieu of charter?

17 MRS. FREEDLANDER: Accept it is not a succinct
18 word. I think the charter has a meaning. It is a Con-
19 stitution. It is synonymous with the word Constitution.
20 If we accept Constitution, I think we should accept
21 charter; and then within that, they can have whatever we

1 allow them; a lapse of four years, to allow any form
2 government they want. What we are saying is, they must
3 have a framework. They can't go without a framework.
4 The form can be whatever the County wants.

5 THE CHAIRMAN: Further discussion, Judge
6 Adkins?

7 JUDGE ADKINS: I would think the term, charter,
8 properly interpreted after adoption of this Constitution
9 would necessarily, in view of the history, mean a charter
10 adopted pursuant to Article 11(a), whatever it is of the
11 Maryland Constitution, as it existed prior to the adop-
12 tion of this Constitution and would not have, would not
13 be a generic work. It is a specific word of art in
14 terms of modern, in terms of current Maryland thinking,
15 relating to a specific type of document adopted pursuant
16 to a specific provision of the existing Constitution.
17 I think if you use the term charter, there is danger that
18 it will be so interpreted. If you mean a broader con-
19 cept as I do, and as I believe the Chairman has indicated,
20 involving not only a charter but also a Commissioner
21 form, subject to only the will of the people, then that

1 word should not be used, but we perhaps should use a new
2 word, instrument of government.

3 THE CHAIRMAN: Mr. Clagett?

4 MR. CLAGETT: I am not going to repeat what
5 I have already said because I think what I said was
6 clearly understood by everybody. I only add that I am
7 completely appreciative of the integrity of the thinking
8 of Mrs. Freedlander, but I am sincerely afraid that it
9 is not practical insofar as the problem which Prince
10 Georges County and other Counties which have not followed
11 the charter form of government have run into, and there
12 is no reason to allow the monster to be resurrected,
13 which could defeat the whole purpose of what we are
14 trying to accomplish here.

15 THE CHAIRMAN: Dr. Winslow?

16 DR. WINSLOW: May I suggest a possible alter-
17 native to all of these, instead of saying an instrument
18 of government or saying charter, merely say, may enact
19 the basic law. There is no misunderstanding that. It
20 doesn't necessarily mean the kind of charter other
21 Counties have had. It is merely a basic law. It is as if

1 you said Constitution, but it doesn't have the connota-
2 tion that the word charter does.

3 THE CHAIRMAN: Mr. Gentry?

4 MR. GENTRY: Is the fear that you express that
5 by using the word, charter, you preclude the Commissioner
6 form?

7 THE CHAIRMAN: I have a fear that the same
8 effect Judge Adkins just mentioned, that the word has
9 developed a meaning of its own. It means a very special
10 thing in Maryland.

11 MR. GENTRY: Even used in the three places we
12 have it here, enact a charter, would be fearful that that
13 would mean either pushing the Commissioner or precluding
14 this Commissioner type?

15 THE CHAIRMAN: Yes, I think it could be. I
16 think the ambiguity could be largely removed by explicit
17 comment, but I think the same would be true as to the
18 phrase, instrument of government. You could make it very
19 clear that you meant here, charter, but not necessarily
20 an Article 11(a) charter.

21 DR. BARD: Is it not true that in a sense

1 every County now does have a charter, in the broadest
2 sense?

3 THE CHAIRMAN: In the broad sense.

4 DR. BARD: And therefore if we use charter,
5 without some description following it, we have already
6 got it. This is what I am saying. I like Dr. Winslow's
7 suggestion. I think it would take care of the valid
8 criticism Mrs. Freedlander has and at the same time keep
9 us away from charter, with the word, form, following it,
10 because I think naturally we in Maryland say charter
11 form. That identifies it as a form, whether we like it
12 or not.

13 THE CHAIRMAN: Mr. Scanlan?

14 MR. SCANLAN: I think in 11.04(b) you have
15 really a better word. There you say, until such time
16 as the County adopts a plan or the General Assembly
17 becomes effective. I note in the model Code they use
18 the phrase instead of instrument of government, plan of
19 government, and use it in a manner which makes it clear
20 that the charter is just one form of the plan of govern-
21 ment. Now, I finally understand what they mean by

1 instrument of government. I guess it is clear in my
2 mind. I think you had a better word at hand which you
3 did use in 11.04(b).

4 THE CHAIRMAN: Mr. Clagett?

5 MR. CLAGETT: I would only like to add that
6 we met for what was it, about five hours, and we used
7 practically all of the suggestions in one way or another
8 that have been made here and finally came to the instru-
9 ment of government being the one that fitted most neatly.
10 It also, as you look up charter, is one of the phrases
11 to define a charter in the dictionary. I don't think
12 anybody is going to have any great difficulty in under-
13 standing what is meant here. I think Dr. Winslow's
14 suggestions gets us into an area where there are differ-
15 ences, and where the differences get cumbersome as you
16 try to deal with them later on.

17 THE CHAIRMAN: Any further discussion? Are
18 you ready for the question? The question arises on the
19 motion to amend the pending motion by substituting the
20 word charter, for the word, instrument of government, wher-
21 ever they appear in Section 11.04(a). A vote Aye is in

1 favor of the use of the word charter. A vote No is a
2 vote in favor of retention of the phrase, instrument
3 of government. All those in favor of the motion, signify
4 by a show of hands.

5 MR. BROOKS: Three.

6 THE CHAIRMAN: Contrary?

7 MR. BROOKS: Twelve.

8 THE CHAIRMAN: The motion fails, 3 to 12.

9 The question now arises on the motion to
10 amend Section 11.04(a). Is there any further discussion?

11 Mr. Sayre?

12 MR. SAYRE: I repeat the question for Mr. Ad-
13 kins. Do I understand now under your new wording that
14 there is sufficient Home Rule so that we have the reserve
15 powers for a County to operate itself?

16 THE CHAIRMAN: I am not sure I understand the
17 question.

18 MR. CLAGETT: I think I understand the ques-
19 tion, from previous conversations, and I think the answer
20 is Yes.

21 THE CHAIRMAN: Mr. Sayre, are you satisfied

1 with the answer?

2 MR. SAYRE: I would like to have it explained
3 to me, how we can know in advance that we have those
4 powers by this wording.

5 THE CHAIRMAN: I don't know that this wording
6 is the wording that gives you the powers. You will have
7 to restate your question because I don't think we follow
8 it. The powers of the County are covered by Section 11.03.

9 MR. SAYRE: Yes, but if the powers of those
10 Counties are not granted by an instrument of government
11 they don't have them. That is what worries me.

12 MR. CLAGETT: Mr. Chairman, let me explain.
13 The powers are granted by the Constitution itself and
14 the Counties have those powers upon the effective date
15 of the Constitution. With those powers, already granted
16 by the constitutional instrument, the structure is
17 merely the manner in which the County will exercise those
18 powers, and that is why I answered the question in the
19 affirmative. The two dovetail, I think, in a way that
20 when you read the whole instrument, after we have adopted
21 this amendment, so that there should be no question about

1 it.

2 THE CHAIRMAN: I think that is what I was
3 trying to say. Section 11.03 governs the grant of
4 powers. It is either the powers that exist by virtue
5 of the Constitution or that haven't been taken away
6 by the Legislature; the manner of the exercise of those
7 powers is to be granted by the instrument of government.
8 The County has to the extent that it is not taken
9 away by the Legislature, full Home Rule power. If it
10 chooses to adopt an arrangement of government that pre-
11 vents it from exercising all the powers that it has, I
12 suppose this is possible.

13 MR. SAYRE: If it is done by a class.

14 MR. CLAGETT: No. Look at Subsection (b).
15 That tends to clarify it also, I think, until such
16 time as the charter is adopted or instrument of govern-
17 ment or plan, whatever we are going to call it, the powers
18 provided in this Constitution are in the hands of the
19 existing County government, upon the effective date of
20 the Constitution.

21 MR. SAYRE: I guess we are trusting to the

1 General Assembly to come up with an instrument that does
2 indeed grant powers.

3 THE CHAIRMAN: The instrument wouldn't grant
4 the powers, Mr. Sayre. The powers are granted by the
5 Constitution to the extent they are not taken away by
6 the Legislature.

7 MR. SAYRE: That is right. I am just thinking
8 if the Legislature fell short on that instrument, from
9 what other charter governments --

10 THE CHAIRMAN: What instrument?

11 MR. SAYRE: That the General Assembly said
12 you have to accept four years hence, in other words, four
13 years have passed. You have had your change. You haven't
14 done anything. Now, what is the instrument the General
15 Assembly has come up with? Suppose that instrument is
16 inadequate?

17 JUDGE ADKINS: It would be unconstitutional,
18 Mr. Sayre, if it withheld from the Counties any powers
19 which this Constitution by other Articles delegated to
20 them. It could not, for example, have within it a pro-
21 vision that the Counties falling within the purview of

1 the plan which they adopt shall not have the power to
2 tax, for example, to use an extreme situation, because
3 this would be unconstitutional in view of other provisions
4 of this act.

5 THE CHAIRMAN: Mr. Sayre, let me make this
6 comment. I believe I have a glimmer of what you are
7 driving at. Under the present Constitution, you have
8 powers granted either by a charter or by the Express
9 Powers Act. Under this Constitution you will have neither.
10 The charter will not grant powers. There will be no
11 Express Powers Act.

12 MR. SAYRE: Right.

13 THE CHAIRMAN: The charter, if it speaks on
14 powers, will do so only as a Constitution, to say that
15 such and such a power be not exercised or shall be
16 exercised with certain limitations. Therefore, if a
17 charter is adopted, presumably it will not contain a list
18 of powers to be exercised by the County. It will not
19 authorize the County to tax. The County will have that
20 power.

21 MR. SAYRE: Then when it comes to one of the

1 various forms of government, it will only pick one, is
2 that about it, then?

3 THE CHAIRMAN: What is "T"?

4 MR. SAYRE: County Manager, County Council,
5 elective executive.

6 THE CHAIRMAN: That is just the framework of
7 government that provides the method of exercising the
8 powers, but doesn't have anything to do with the confer-
9 ring of the power itself.

10 MR. BROOKS: That model charter will have one
11 form of government in it, and if the people don't like
12 it, they can then amend that charter which is imposed
13 on them by the State, but it can only have one form of
14 government and yes, it will contain some form of govern-
15 ment in that one charter.

16 MR. SAYRE: One form that could be amended is
17 what you are saying?

18 THE CHAIRMAN: Certainly.

19 MR. SAYRE: Okay.

20 THE CHAIRMAN: Any further question on 11.04(a)?
21 Are you ready now for the motion to amend 11.04(a)? Does

1 anybody want to have it again?

2 MR. CLAGETT: No, sir. We know it.

3 THE CHAIRMAN: A vote Aye is a vote in favor
4 of amending Section 11.04(a) as previously stated.
5 All those in favor, please signify by saying Aye. Con-
6 trary, No. The Ayes have it.

7 MR. BROOKS: Was that unanimous?

8 THE CHAIRMAN: It was. Section 11.04(b).

9 MR. CLAGETT: It has already been discussed,
10 I would say, in large part. Here, until such time as
11 the County adopts a plan or the General Assembly plan
12 becomes effective, the existing County governments
13 shall have the broad powers of Home Rule provided in the
14 Constitution.

15 THE CHAIRMAN: Mr. Scanlan?

16 MR. SCANLAN: Why did you switch from, instru-
17 ment of government, in your plan? The plan, this is the
18 first time the word, plan, has popped up here -- until
19 such time as the County adopts an instrument of govern-
20 ment, or an instrument of government provided by the
21 General Assembly, becomes effective. At least, that would

1 have continuity with what went before. This is a new
2 word. Is a plan different than an instrument of govern-
3 ment, different from a charter, different from a Code
4 County?

5 DR. BURDETTE: This is a historical enactment.

6 THE CHAIRMAN: We haven't got time for any
7 more such explanations. The point is well taken. We
8 ought to stick with one or the other.

9 MR. CLAGETT: I think it is just a matter of
10 the fact that this has been drafted and redrafted. I
11 would have no objection to instrument of government
12 being substituted for plan.

13 MR. SAYRE: Could we leave that to the Committee
14 on Style?

15 THE CHAIRMAN: Let's be consistent and put that
16 in.

17 MR. SCANLAN: I agree we should be consistent.
18 If I had my druthers, I think I would have the word plan,
19 where we have had instrument of government, rather than
20 the phrase, instrument of government.

21 THE CHAIRMAN: You can move it if you want.

1 Let's don't take that time again.

2 MR. SCANLAN: I give up.

3 THE CHAIRMAN: Any further question or dis-
4 cussion of Section (b)?

5 I have several questions that bother me very
6 much. There is no reference at all here to the continu-
7 ance of powers of a charter County, one that has an
8 existing instrument of government. You certainly mean for
9 that to continue. I have great difficulty with the pro-
10 vision that the existing County governments shall have
11 those powers provided in the Constitution.

12 MR. CLAGETT: I didn't follow the second,
13 because I was thinking about the first.

14 THE CHAIRMAN: The second, it seems to me you
15 are mixing apples and oranges. In the first part of
16 the sentence, you talk about an instrument of government,
17 not talking about powers at all and properly so. You
18 are concerned only with the instrument of government.
19 It seems to me that is what you ought to be concerned
20 with in the case of the existing County governments.

21 MR. CLAGETT: I don't see the problem because

1 if you have already got an instrument of government,
2 then where is there any problem? If you haven't got
3 an instrument of government, it says that the existing
4 County government shall have the broad grant of power
5 given by the Constitution. You can't really see where
6 there is any problem.

7 THE CHAIRMAN: Let me go back to the first
8 part, first. What about the charter Counties?

9 MR. CLAGETT: They have an instrument of
10 government.

11 THE CHAIRMAN: Where is the provision for
12 them in (b)?

13 MR. CLAGETT: Well, you don't need it in (b).
14 You have already got it under 11.03(a).

15 THE CHAIRMAN: I see nothing under 11.04(a)
16 that provides that the existing charter County continues
17 under its existing charter. It seems to me that has got
18 to be in (b).

19 MR. CLAGETT: Until such time as the County
20 adopts. Now, if it has already got a charter, it has
21 an instrument of government, and therefore it doesn't

1 have to adopt and immediately upon the effective date
2 of the Constitution, 11.03(a) would give to that charter
3 County as well as all the other Counties broad grant of
4 power, so again I ask, where is the problem?

5 THE CHAIRMAN: Baltimore County is a charter
6 County. What part of Section 11.04(b) pertains to
7 Baltimore County?

8 MR. CLAGETT: Actually, 11.04(b) would not
9 affect Baltimore County because it already has an
10 instrument of government, and what is being contemplated
11 here is a provision to take care of those Counties which
12 do not have an instrument of government, being able to
13 effectively exercise the powers granted under 11.03(a)

14 THE CHAIRMAN: That is exactly what you are
15 saying in the second part of 11.04(b). You are referring
16 to existing County governments.

17 MR. CLAGETT: That is what we intend to say.

18 THE CHAIRMAN: Does that include Baltimore
19 County?

20 MR. CLAGETT: That would include all Counties,
21 and it would mean whether or not they have an instrument

1 of government or a charter or they don't have that
2 charter.

3 THE CHAIRMAN: Then, do you mean to say that
4 Baltimore County as a chartered government shall have
5 the broad powers spelled out in the Constitution regard-
6 less of any -- no, it would still be subject to the
7 limitations in the charter.

8 MR. CLAGETT: Yes, sir, but instead of having
9 express powers or the powers provided by Article 23(a),
10 it would have the broad grant of power which would be all
11 of those, plus any others that the Legislature had
12 failed to give them and which would fall into the broad
13 grant of powers.

14 MR. BROOKS: That is under, really, 11.03(a),
15 that they have that power, rather than 11.04.

16 MR. CLAGETT: 11.04 wouldn't affect Baltimore
17 County, because it is contemplated here in 11.04 to take
18 care of those Counties which have no adequate structure
19 or instrument of government to take care of the exercise
20 of the powers under 11.03.

21 THE CHAIRMAN: Until you said that, I was

1 with you, but you have taken me away from you again now.
2 I don't see how you can possibly say that any County
3 is going to be without the purview of Section 11.04.
4 This is the only Section --

5 MR. CLAGETT: I understand what you are get-
6 ting at here. I don't mean to say that literally,
7 because I do mean Baltimore County can amend its instru-
8 ment of government and utilize the amending power under
9 11.04, but that falls under 11.04(c).

10 THE CHAIRMAN: Let me put my question to you
11 this way. Baltimore County has a charter adopted prior
12 to this Constitution. What in this Constitution says
13 that that existing charter and the powers spelled out
14 in it shall continue?

15 MR. CLAGETT: 11.03(a): A County, including
16 Baltimore County, may exercise any power other than judi-
17 cial power or perform any function which is not denied
18 to it by this Constitution by its charter or by law,
19 et cetera.

20 MRS. FREEDLANDER: That doesn't apply to struc-
21 ture. This is the Section on structure. I think what

1 you are referring to, Mr. Eney, is what in this Section
2 on structure applies to the existing charter government;
3 is that correct?

4 THE CHAIRMAN: That is right.

5 MR. CLAGETT: I find you in the same category
6 that Phil Sayre was in a little while ago. We are deal-
7 ing with something entirely different here. The powers
8 are already there. This is merely the structure to
9 exercise those powers, and where that structure is already
10 existent, it would not require any action by the County,
11 such as Baltimore County, except where it might desire
12 to amend its existing charter to more adequately take
13 care of what it wants to do in the exercise of 11.03(a).

14 THE CHAIRMAN: Mrs. Bothe?

15 MRS. BOTHE: What is the status of local
16 legislation during this four-year period as applied to
17 Counties which haven't yet adopted charter or are
18 waiting out the four years to take on the State's pro-
19 posal.

20 MR. CLAGETT: They have all of those powers.

21 MRS. BOTHE: They have them. Let's assume there

1 is a County that is now a charter County, that doesn't
2 enact an instrument of government and sits out the four
3 years.

4 THE CHAIRMAN: County Commissioners will
5 legislate.

6 MR. CLAGETT: They have the broad grant of
7 power.

8 MRS. BOTHE: I understand, but if they have
9 in
no framework/which to exercise --

10 MR. CLAGETT: The Committee is firmly of
11 the opinion, and this has been the cause espoused by
12 Dr. Burdette from the outset, that the County Commis-
13 sioners do have an adequate setup, and I am not saying
14 structure now, but do have an adequate setup, to take
15 care of the exercise of the broad grant of powers. How-
16 ever, there are other problems that enter into the pic-
17 ture such as I pointed up some time ago, that they could
18 perpetuate themselves for twenty years, in office, by
19 the exercise of those powers, so therefore, we feel,
20 that is, the Committee feels, that the Counties and the
21 existing County governments, including County Commissioner

1 form of government, can adequately administer the
2 affairs of the County with the broad grant of powers
3 during this period.

4 THE CHAIRMAN: Judge Adkins?

5 JUDGE ADKINS: May I propose an amendment
6 to Section (b), which will read as follows: Until and
7 unless changed by Section (a) hereof, County governments
8 existing at the date of this Constitution shall have
9 those powers provided in the Constitution.

10 DR. BURDETTE: Changed by or changed under the
11 provisions of (a)?

12 JUDGE ADKINS: Under the provisions of Sec-
13 tion (a) hereof. That seems to me to meet the Chair's
14 objections and also what I conceive to be the hiatus
15 here of the County which does not, in fact, change its
16 form of government, pursuant to Section (a). That is,
17 charter Counties preexisting the date of this Constitu-
18 tion.

19 THE CHAIRMAN: Is there a second to the motion?

20 MR. GENTRY: Second it.

21 THE CHAIRMAN: Are you seconding?

1 MR. GENTRY: Yes.

2 MR. BOND: I will second it, Mr. Chairman.

3 THE CHAIRMAN: Mr. Gentry?

4 MR. GENTRY: Instead of, or in place of the
5 reference to powers provided in the Constitution, the
6 existing County government shall continue.

7 JUDGE ADKINS: But you want to broaden that
8 to give them powers provided in this Constitution.

9 MR. GENTRY: They have that by 11.03(a).
10 Counties have all these powers.

11 THE CHAIRMAN: This is the thing that was
12 causing me confusion before.

13 Mr. Scanlan?

14 MR. SCANLAN: I would say, Phil, I wasn't
15 disturbed about the vesting of powers. I was disturbed
16 about the simple proposition, Montgomery County has a
17 charter. The more I read 11.04(a) and 11.04(b) even as
18 proposed under Judge Adkins' amendment, it isn't clear
19 if Montgomery County didn't come in and readopt its
20 charter under the procedures provided in 11.04(a), they
21 would be subject to the hazard or the possibility that

1 the General Assembly would impose its form of charter four
2 years later. I still don't think that is clear, and
3 that is a more narrow concern than worrying about whether
4 the powers pass or what happens to the powers. I am not
5 worried about that. I think that is reasonably clear,
6 at least can be fairly implied, but I don't think it
7 could be fairly implied that old charters carry over.
8 I don't see that language.

9 THE CHAIRMAN: Mrs. Freedlander?

10 MRS. FREEDLANDER: I would like to speak to
11 11.04(a). I agree with Mr. Scanlan. I would like to
12 suggest that we add a sentence to 11.04 that would state
13 something like this: Nothing in this Section shall apply
14 to existing charter government. We are talking about
15 structure now, not powers. Nothing in this Section shall
16 apply to existing charter government, a sentence.

17 MR. CLAGETT: I don't think we want that,
18 nothing in this Section shall require.

19 THE CHAIRMAN: Mr. Sayre?

20 MR. SAYRE: If we take the four charter govern-
21 ment right now, I see them under this Constitution as not

1 necessarily exercising all the powers that they actually
2 are entitled to. Therefore, see if this ties in with
3 your wording, Judge: If we have something to the effect,
4 existing charter instruments of County governments shall
5 continue under their charter powers until any such charter
6 is amended. Would that solve the problem?

7 JUDGE ADKINS: I think you are saying the same
8 thing I tried to say in a little different language.

9 MR. SAYRE: Does this not say it more explicit-
10 ly? We are only talking about charter governments.

11 JUDGE ADKINS: I wasn't.

12 MR. CLAGETT: In 11.04(a) where we used voters
13 of a non-charter County, we were implying that the voters
14 of a charter County did not have to go through procedures
15 and requirements of 11.04(a).

16 MR. SCANLAN: We eliminated that.

17 MR. CLAGETT: We have eliminated that. If
18 actually there is any question about the intent here,
19 I would certainly not object to a clarification of it
20 so that we are certain that we get at the intent.

21 THE CHAIRMAN: Let me state again what my

1 problem was and what I think Judge Adkins is trying to
2 get at, but his solution doesn't entirely satisfy me
3 either. As I understood your previous comment, 11.03
4 deals with powers.

5 MR. CLAGETT: Yes, sir.

6 THE CHAIRMAN: That is the entire repository
7 or the source of the powers in this Constitution.
8 11.04 deals with the structure of County governments,
9 but in 11.04(b) you mix the two, and my difficulty arises
10 out of the fact that you mix the two. If 11.04(b) con-
11 tented itself solely with structure, and said that exist-
12 ing charter County structure continues, and that until
13 such time as any other County adopts the structure or the
14 General Assembly plan or structure becomes effective,
15 the existing structure of County government in that
16 County continues, I would have no difficulty, but it is
17 when you toss into the hopper as to the existing County
18 governments only this question of powers that you create
19 the confusion in my mind. Take powers out of this Sec-
20 tion. Then you leave it solely in Section 11.03 where I
21 think it belongs.

1 MR. BROOKS: If you deleted (b) altogether,
2 wouldn't you really resolve the question without stating
3 anything?

4 THE CHAIRMAN: That worries me. I think what
5 we need is a provision that says what existing structures
6 of County government continue.

7 JUDGE ADKINS: Why not just amend my motion
8 tosay, shall continue, and shall have those powers pro-
9 vided in the Constitution?

10 THE CHAIRMAN: I don't see you need the refer-
11 ence to powers.

12 JUDGE ADKINS: I think you do need the
13 reference to powers.

14 THE CHAIRMAN: 11.03 gives them the powers.

15 JUDGE ADKINS: Maybe it does.

16 MR. DELLA: Mr. Chairman, couldn't you just
17 add another paragraph, (d), for instance, any charter
18 government now in existence, or in operation, that does
19 not meet the requirement of this Constitution, will have
20 to amend their charter to come up to existing laws, or
21 something to that effect. This gives them the opportunity

1 then to be recognized as a charter government and at the
2 same time most of them probably will comply with the
3 Constitution and the power structure, et cetera, and if
4 they don't, they amend their Constitution to so provide.

5 MR. CLAGETT: Then, Mr. Chairman, if we added
6 the language in Subsection (b), the existing charter --
7 the Counties which now have a charter shall continue.
8 Wait a minute. That isn't it. All Counties which
9 presently have a charter, as well as those Counties which
10 have not adopted an instrument of government or General
11 Assembly plan has become effective shall have those powers
12 provided in the Constitution. Would that do it?

13 THE CHAIRMAN: No. You would still have
14 powers. Would this perhaps do it: Until such time as
15 the County adopts an instrument of government or the
16 instrument of government proposed by the General Assembly
17 becomes effective, the structure of existing County govern-
18 ments shall continue in effect as the instrument of
19 government for such Counties, or something to that effect.

20 MR. CLAGETT: Except that you haven't got a
21 structure for the County Commissioners.

1 THE CHAIRMAN: Why haven't you? The County
2 Commissioners is a structure of government, isn't it?

3 DR. BURDETTE: That strikes me as freezing the
4 present charter from amendment until some other action,
5 but you certainly want to have them have the amending
6 process which they have in the existing charter.

7 THE CHAIRMAN: That is permitted under 11.04(a).
8 What I usggested just says, until such time as that
9 is accomplished, the existing structure of government
10 continues.

11 DR. BURDETTE: But that almost implies until
12 such time as they have a general overhaul, they can't
13 have a single one sentence amendment, which may be needed.

14 THE CHAIRMAN: Mrs. Freedlander?

15 MRS. FREEDLANDER: Mr. Chairman, your phraseology
16 just applies, I believe, to those Counties that are not
17 chartered as yet.

18 THE CHAIRMAN: No, both.

19 MRS. FREEDLANDER: Not as written, until such
20 time as County adopts. It does not presume there are four
21 that already have it, the charters.

1 THE CHAIRMAN: Adopts a new instrument of
2 government then.

3 MRS. FREEDLANDER: A new instrument of govern-
4 ment.

5 THE CHAIRMAN: Mrs. Bothe?

6 MRS. BOTHE: I don't see the need for the
7 whole paragraph. The powers are there. They are im-
8 mediately conferable at the time the Constitution is
9 passed. If the County doesn't have a structure to proceed
10 with them, it is going to have to find/somehow, apparently.
it

11 THE CHAIRMAN: The necessity for it is
12 simply this, it seems to me. The whole structure of
13 County Commissioner form of government is spelled out
14 in statutes. They are going to die when the Constitution
15 dies, so that unless we have something that affirmatively
16 continues these governments, until the new one is
17 adopted, it seems to me you have nothing.

18 MRS. BOTHE: You don't have anything anyway,
19 necessarily. You conferred powers.

20 THE CHAIRMAN: Why don't you have anything?

21 MRS. BOTHE: You have forms of County govern-

1 ments and all but four Counties exercise local legisla-
2 tion.

3 THE CHAIRMAN: Suppose in a particular County
4 there is a provision now for three County Commissioners
5 to be elected every four years. That is accomplished
6 by statute. What is going to take the place of that
7 when that dies, with the old Constitution?

8 MRS. BOTHE: It says the County has the power.
9 How the County is going to exercise it is a question for
10 the County to decide.

11 THE CHAIRMAN: What will continue the County
12 Commissioners?

13 MRS. BOTHE: The County will have to do some-
14 thing or else wait out four years and adopt what the
15 State says.

16 THE CHAIRMAN: Mr. Sayre?

17 MR. SAYRE: What we are doing here is what
18 is proposed to be under the Constitution with the
19 schedule, and I think this is a valid concern whether we
20 want to put it in the schedule^{or}/here. I would like to
21 reread this over and above what has been read: Existing

1 charter instruments of County government shall continue
2 under charter powers until any such charter is amended.
3 Other County structures of government shall continue
4 until changed under the terms of this Constitution.

5 Does that strike what we are talking about?

6 THE CHAIRMAN: I don't know.

7 MR. CLAGETT: Why couldn't we add simply
8 another sentence and say, those counties presently hav-
9 ing a charter instrument of government shall not be
10 affected.

11 MR. SAYRE: They may be affected because they
12 are going to inherit more powers than they may exercise
13 now and may want to amend.

14 JUDGE ADKINS: May I make one more effort,
15 and I will quit? If we make it read, until and unless,
16 changed pursuant to the provisions of Section (a)
17 hereof, County governments existing at the date of this
18 Constitution shall continue. Haven't we said it?

19 MR. GENTRY: Yes.

20 MR. CLAGETT: And shall have those powers --

21 MRS. BOTHE: They have powers.

1 JUDGE ADKINS: I had that originally. The
2 Chair feels it is redundant. I now agree. What we are
3 really trying to draw here is a grandfather clause.

4 MR. BROOKS: That is the schedule provision.

5 JUDGE ADKINS: If you are going to put it
6 in the Constitution, doesn't what I propose do it?

7 THE CHAIRMAN: It does it better for me. I
8 don't know about the others. It is limited to the exist-
9 ing government as a structure of government.

10 JUDGE ADKINS: You don't get involved as to
11 whether it is a County Commission, Code or anything else.

12 DR. BARD: I would like to add if inherent
13 within it is the fact that Baltimore City's present
14 government is to be interpreted as a County government
15 under that so-called statement, because the way it reads,
16 it applies to the present, and presently we are not
17 yet called a County government. I suspect that would be
18 inherent, but I would like for it to get in the minutes.

19 MR. CLAGETT: Let me see this now. How about
20 this: The existing County government shall have those
21 powers provided in the Constitution.

1 THE CHAIRMAN: You are still talking powers.

2 MR. CLAGETT: Shall have those powers pro-
3 vided in the Constitution, until such time as the County
4 adopts an instrument of government or --

5 THE CHAIRMAN: May I make a suggestion? We
6 are losing a tremendous amount of time on this. If this
7 is a matter for a schedule, can we not delete it here,
8 pass it, to be included in the schedule, with the clear
9 understanding that what we are saying is that the schedule
10 shall provide clearly that existing charters, existing
11 County Commissioner forms of government and existing
12 Baltimore City form of government shall continue unless,
13 or until changed, pursuant to 11.04(a).

14 JUDGE ADKINS: I don't agree that it is a
15 schedule provision, because charters which have been
16 adopted prior to the adoption of this Constitution will
17 last perhaps as long as this Constitution, and anything
18 which lasts as long as this Constitution should not be
19 a schedule provision, I don't think. I think it ought
20 to be in the Constitution, but having said that --

21 THE CHAIRMAN: Do you want to give us again

1 your latest revision of your motion?

2 JUDGE ADKINS: Until and unless changed pur-
3 suant to the provisions of Section (a) hereof, County
4 governments existing at the date of this Constitution
5 shall continue.

6 MR. GENTRY: I second that.

7 JUDGE ADKINS: As I understand --

8 MR. CASE: That does mean, in effect, that if
9 they haven't changed by January 1 of the fourth year
10 one shall become effective for them. I think that does
11 it.

12 MR. BROOKS: That is only being good for four
13 years, so it is not applicable forever after. It is only
14 applicable for four years just as other grandfather
15 clauses will be in the Constitution that will be in the
16 schedule.

17 JUDGE ADKINS: I don't think that is accurate
18 in view of the fact that charter Counties which have
19 acted prior to the date of this Constitution need to
20 do nothing.

21 MR. CLAGETT: It merely says if it is not
affected by 11.04(a), it continues.

1 MR. BROOKS: There is nothing under this
2 Constitution that does require them to do anything other
3 than that after the four-year period.

4 JUDGE ADKINS: No, but if you try to provide
5 in the schedule that their government continues, it seems
6 to me the schedule drops out at some period of time.

7 MR. BROOKS: After four years, what question
8 remains under this provision anyway? That has all been
9 addressed itself to any which was the gap between enact-
10 ment of the Constitution and the four-year lap.

11 MR. CLAGETT: In any event, I am inclined
12 to accept or to be in favor, if there is any question
13 about the present language which I really honestly
14 can't see, notwithstanding all this discussion, and the
15 other seems to take care of it, I would be inclined to
16 go along with it, because I am not wedded to this par-
17 ticular language. That should be in the schedule, too.

18 THE CHAIRMAN: Do you substitute that for your
19 previous motion, Judge Adkins?

20 JUDGE ADKINS: Yes, sir.

21 THE CHAIRMAN: I don't recall who seconded it.

1 MR. GENTRY: I seconded it, and I will accept
2 that.

3 THE CHAIRMAN: Would you give it to us again,
4 unless and until changed, pursuant --

5 JUDGE ADKINS: Unless and until changed, pur-
6 suant to the provisions of Section (a) hereof, County
7 governments existing at the date of the adoption of this
8 Constitution, shall continue.

9 MR. BOND: I seconded the original.

10 DR. BURDETTE: May I ask a question? Is that
11 clear? I gather it is, Mr. Chairman, that although
12 these governments continue, that they have such broader
13 powers, if they be broader, as are given by this new
14 Constitution?

15 THE CHAIRMAN: I don't think there is any
16 question that whatever County government exists has the
17 powers conferred upon it under Section 11.03.

18 DR. BURDETTE: It seems to me as a layman that
19 the language says expressly that those governments which
20 are or may imply, which don't do anything within four
21 years, continue with their existing structures and powers.

1 MR. BROOKS: That is right.

2 MR. CLAGETT: That is what the amendment
3 means to you?

4 DR. BURDETTE: I think that it can bear that
5 inference very strongly. If there were any intent to
6 let them have the powers given in this Constitution, it
7 would almost have said so.

8 MRS. BOTHE: It did.

9 MR. CLAGETT: Will you read it once again, one
10 or the other of you?

11 THE CHAIRMAN: Unless and until changed, pur-
12 suant to the provisions of Section (a) hereof, County
13 governments existing at the date of adoption of this
14 Constitution shall continue.

15 DR. BURDETTE: That means continue the way
16 they are, doesn't it? It seems to me they continue as
17 they are, structure and power. If you said, continue
18 with respect to structure --

19 MR. CLAGETT: May continue. Let's put a
20 may, instead of a shall, and I am satisfied with it,
21 because it doesn't mandate that they shall continue. It

1 means they shall continue and by use of may, instead of
2 shall, it means they can be amended.

3 MR. SAYRE: Unless and until.

4 JUDGE ADKINS: No further comment.

5 MR. CLAGETT: I would move we substitute the
6 word may, for shall.

7 THE CHAIRMAN: Do you accept it, Judge Adkins?

8 JUDGE ADKINS: No. That defeats the whole
9 purpose of the proposal. I don't want to be arbitrary.

10 DR. BURDETTE: Judge Adkins thinks this gives
11 them broader powers of the Constitution?

12 JUDGE ADKINS: Yes.

13 MR. SAYRE: Do I understand that we can't
14 go beyond a, you said of 11.04? Isn't that what you
15 are referring to? We surely can incorporate a charter
16 government could continue as it is, under Section 11.03(a),
17 and therefore, I am not sure that I would confine it to
18 just this part of the Constitution, pursuant to what you
19 said. I would almost say, pursuant to the provisions of
20 this Constitution.

21 MR. HAILE: May I ask whether Baltimore County

1 would have to have another referendum on whether or not
2 to have a charter?

3 JUDGE ADKINS: I would think clearly not.

4 MR. SAYRE: I would think so, as long as you
5 make it this way.

6 JUDGE ADKINS: That is covered by the amend-
7 ment.

8 MR. CLAGETT: Let me ask Judge Adkins this
9 question. Why do you want to mandate the continuance
10 of the existing charters and not let the people, or not
11 let them be amended or changed for the four-year period?

12 THE CHAIRMAN: It doesn't do that.

13 MR. CLAGETT: It says, unless or until changed
14 under Subsection (a) above.

15 JUDGE ADKINS: One of the provisions of the
16 existing governments is a method of amending the govern-
17 ment as it now exists. There is nothing here which re-
18 moves the existing power of amendment. All it says is,
19 the structure as now set up stays until something else
20 replaces it.

21 MR. CLAGETT: I am satisfied with that explanation.

1 THE CHAIRMAN: Any further discussion? Are
2 you ready for the question? The question arises on the
3 motion to amend Subsection (b) of Section 11.04 to read
4 as follows: Unless and until changed, pursuant to the
5 provisions of Section (a) hereof, County governments
6 existing at the date of the adoption of this Constitution
7 shall continue. All those in favor, please signify by a
8 show of hands. Contrary. The motion is carried 17 to 1.
9 Any further discussion of (b)?

10 Section (c).

11 MR. CLAGETT: Section (c) provides that any
12 instrument of government of a County shall include a
13 provision for amendment by majority vote of the voters
14 of the County voting on such amendment, or any amendment
15 submitted by the governing body or by petition. In
16 other words, it provides for an amendment to be included
17 in the instrument of government, and a referendum.

18 THE CHAIRMAN: This makes it mandatory that the
19 instrument of government include this provision?

20 MR. CLAGETT: Yes.

21 THE CHAIRMAN: Any question?

1 Mr. Gentry?

2 MR. GENTRY: Is there any history of any
3 charter being adopted that was not amendable?

4 MR. CLAGETT: No.

5 MR. GENTRY: Is this really necessary?

6 MR. CLAGETT: We felt it was necessary, because
7 oth er wise we would have felt that the County Commis-
8 sioner form could go on ad infinitum.

9 THE CHAIRMAN: Any further discussion or
10 question? If not, we will move on to Section 11.05,
11 Page 19.

12 MR. CLAGETT: In Section 11.05, the Committee
13 has provided that the powers of the General Assembly
14 over the municipal corporations shall be shifted to the
15 County, and the County may, by public local law, provide
16 for the creation, incorporation, changing, merging,
17 dissolution and altering of bounderies of its municipal
18 corporations and may delegate powers to them.

19 However, the existing municipal corporations
20 shall continue as a nonconforming use, and may be dis-
21 solved or their powers withdrawn only with the consent

1 of the municipal corporation or by consent of the Gen-
2 eral Assembly by law.

3 THE CHAIRMAN: Dr. Bard?

4 DR. BARD: Is the word, may, a restrictive
5 one, a mandatory one?

6 THE CHAIRMAN: Which may?

7 DR. BARD: A County may provide. I would
8 hope that it read, a County should provide, because
9 actually a County, if it so desired, would not need to
10 provide at all for it, is that correct?

11 THE CHAIRMAN: That would be true in Balti-
12 more County today.

13 MR. BROOKS: Some don't.

14 DR. BARD: I know. Two don't right now.

15 THE CHAIRMAN: Do you want to make it compul-
16 sory?

17 DR. BARD: I say if you are turning over to
18 the County responsibilities that are now in terms of
19 municipal corporations, that are now held by the State,
20 the State has made it clear that it should provide for
21 the creation of municipal corporations. If you are turn-

1 that whole power over to the County, then I think it
2 would have to be a should.

3 THE CHAIRMAN: Suppose the County in the exer-
4 cise of that power wants to decide that there shall be
5 no municipalities within its borders?

6 MR. CLAGETT: Exactly, as in Baltimore
7 County right now.

8 DR. BARD: I understand that and Howard County,
9 but the point is that you have turned over to the State
10 the whole, the broad power, and now when you are trans-
11 ferring that broad power to the County you are not trans-
12 ferring it within the same frame of reference, as I see
13 it.

14 THE CHAIRMAN: This Section isn't the transfer
15 of the power from the State to the County.

16 DR. BARD: In a sense, it is.

17 THE CHAIRMAN: No.

18 DR. BARD: 11 (e) no longer exists, isn't
19 that true, in the present Constitution?

20 MR. BROOKS: That is true.

21 DR. BARD: That is what I am saying. My point

1 is that as long as 11 (e) doesn't exist, for example,
2 you will no longer have four classifications in terms
3 of municipal corporations. Isn't that true?

4 MR. BROOKS: That is true.

5 DR. BARD: Therefore since 11 (e) does not
6 exist, everything that is now embodied in 11 (e), it
7 seems to me that whether the County actually moves forward
8 in creating municipal corporations or not is another
9 matter, but provision for it should be there, I would
10 think.

11 MR. BROOKS: Except that even under the present
12 11 (e) and all of the constitutional provisions relating
13 to municipal corporations, there is nevertheless on the
14 statutes a provision which gives the Counties at the
15 present veto power over the creation of any Counties,
16 so it is still optional.

17 DR. BARD: The veto power is all right. I
18 don't object to that, but the mere fact there would be
19 no way by which they could be created.

20 MR. BROOKS: There is no way now unless
21 Counties permit it.

1 MR. CLAGETT: There have been no municipal
2 corporations permitted under 11 (e) since 1953, and the
3 trend is not to create any more municipal corporations
4 because of the moving of the Counties into the field of
5 providing what has heretofore been identified and known
6 as municipal services. Consequently, the need for
7 municipal corporations is not there to the extent that
8 when originally created that need existed.

9 THE CHAIRMAN: Dr. Bard's question, I dis-
10 agree about the use of the word should, but he points up
11 what seems to me is perhaps an omission. There is nothing
12 in this Article which says that the State shall not
13 create a municipal corporation.

14 MR. CLAGETT: Yes, there is.

15 THE CHAIRMAN: Where?

16 MR. CLAGETT: Over there, for the purposes of
17 this Constitution -- wait a minute now.

18 THE CHAIRMAN: It is not here.

19 DR. BARD: No.

20 MR. BROOKS: The Section might read something
21 like Counties exclusively may provide by public local

1 law for creation and incorporation, et cetera, under
2 11.05.

3 MR. SCANLAN: Yes. Otherwise, there would
4 be serious question of whether the State didn't have a
5 residual power traditionally to create a municipal cor-
6 poration.

7 THE CHAIRMAN: No doubt there would have.

8 MR. SCANLAN: Even with this grant of powers in
9 the County.

10 MR. CLAGETT: Here is where I say, in 11.01,
11 Subsection (b), the General Assembly may provide by
12 law for the creation, et cetera, of Counties and multi-
13 County civil divisions. There is no provision for it
14 to create municipal corporations.

15 THE CHAIRMAN: The Legislature has the sovereign
16 power to do it unless you take it away.

17 MR. CLAGETT: Then maybe we have got to get
18 that word, exclusively, in there: A County may provide
19 exclusively.

20 MR. BROOKS: Counties exclusively may provide.

21 MR. CLAGETT: A County only. How about a

1 County only?

2 THE CHAIRMAN: I don't know that that is what
3 you want either. It seems to me what you want is some-
4 thing that explicitly says that the State shall not,
5 and I would think the place for that is 11.01.

6 MR. CLAGETT: I thought we had that in there
7 at one time. I wonder where it went to. I have got it
8 clear now: We had it in there in the sixth draft and
9 then the Commission told us to take it out of there and
10 reference to Artile 11.01, Subsection (b) of the Sixth
11 Report reads as follows: The General Assembly may pro-
12 vide by law for the creation of Counties and other civil
13 divisions, including regional governments and inter-
14 governmental authorities, but excluding municipal cor-
15 porations and for methods and procedures. It looks
16 like to me we got that left out of here.

17 THE CHAIRMAN: It belongs in 11.01 (b).

18 MR. CLAGETT: Yes. I think we ought to put,
19 excluding municipal corporations, back in 11.01 (b).

20 MRS. BOTHE: Dissolution remains, doesn't it,
21 as a provision that the General Assembly alone can

1 dissolve existing.

2 MR. CLAGETT: The Counties dissolve existing
3 except where we provided by law --

4 THE CHAIRMAN: Consent of the General Assembly
5 to the dissolution by Counties.

6 MR. BROOKS: 11.05.

7 MRS. BOTHE: That would be part of dissolu-
8 tion.

9 MR. CLAGETT: We will insert into 11.01,
10 Subsection (b), an exclusion of the municipal corpora-
11 tions.

12 MR. SAYRE: The Sixth Report merely excludes
13 the General Assembly from creating municipal corporations.
14 Maybe that is all we need.

15 MRS. FREEDLANDER: Creating, incorporating,
16 merging, alteration, here it is 11.01 (b) now as we are
17 writing it. We have excluded municipal corporations.

18 DR. BURDETTE: Do you make a motion?

19 THE CHAIRMAN: What language are you going to
20 use?

21 MR. CLAGETT: I move that Section 11.01, Sub-

1 section (b), be amended to include an exclusion of the
2 power to create, incorporate, change, merge, dissolve.

3 THE CHAIRMAN: Can you accomplish it simply
4 by adding the phrase, but not municipal corporations,
5 or, but excluding municipal corporations, at the very
6 end of the Section?

7 MR. CLAGETT: Add it at the very end, after
8 the word authority.

9 THE CHAIRMAN: No, after the word governments,
10 because authorities has been moved up now.

11 MR. CLAGETT: That is right.

12 THE CHAIRMAN: The language would be, but
13 excluding municipal corporations?

14 MRS. FREEDLANDER: Yes.

15 MR. CLAGETT: After the word, representative
16 governments.

17 MRS. FREEDLANDER: I second the motion,
18 Mr. Chairman.

19 THE CHAIRMAN: Any discussion? Are you ready
20 for the question? The question arises on the motion to
21 amend Section 11.01 (b), by adding at the end thereof,

1 after the words regional representative governments,
2 the words, but excluding municipal corporations.

3 MR. CLAGETT: Mr. Chairman, I am a little
4 concerned before we leave that, by the provision in
5 11.05, which says that, existing municipal corporations
6 may be dissolved only by their consent, or the consent
7 of the General Assembly by law.

8 MR. SAYRE: That is where we had only by
9 creation. That is what concerned me.

10 MR. CLAGETT: If we say they can't do it,
11 then we say they can do it --

12 THE CHAIRMAN: It seems to me in 11.01, you are
13 saying the General Assembly cannot by law dissolve, but
14 that is not inconsistent with consenting to dissolution
15 by County under 11.05.

16 MR. CLAGETT: Very well. If there is no in-
17 consistency there --

18 THE CHAIRMAN: We come back then to Dr. Bard's
19 question that the County should be compelled by man-
20 datory language to provide by public local law for
21 municipal corporations.

1 DR. BARD: I have another point there that is
2 related to it. May I clarify it?

3 THE CHAIRMAN: Yes.

4 DR. BARD: What will happen to the various
5 categories in which municipal corporations are now
6 operating? For example, we say, no existing municipal
7 corporation may be dissolved or be subject to the with-
8 drawal of any existing power. All of these categorical
9 arrangements just disappear now?

10 THE CHAIRMAN: What do you mean?

11 DR. BARD: There are four categories under
12 which municipal corporations are operating, is that
13 not true, in 11 (e)?

14 THE CHAIRMAN: Yes.

15 DR. BARD: Well now -- classifications.

16 MRS. FREEDLANDER: There has never been any
17 classification.

18 DR. BARD: You haven't used it.

19 MRS. FREEDLANDER: We haven't classified it.
20 We have never used it.

21 DR. BARD: There is a possibility. Does this

1 mean they are gone? Definitely, for municipalities.

2 MR. BROOKS: Counties individually could
3 set up a classification if they wanted to in each County
4 or go unlimited. There is no restriction at all now on
5 what relationship there is.

6 DR. BARD: Isn't that withdrawal of an
7 existing power?

8 THE CHAIRMAN: No, it is a withdrawal with
9 respect to an existing municipal corporation. In other
10 words, the withdrawal of the existing power refers only
11 to the existing municipal corporation.

12 DR. BARD: Withdrawal of an existing form.

13 MR. BROOKS: It really releases the whole
14 area to a great deal of freedom that at this point is
15 restricted in the present Constitution and statutes.

16 DR. BARD: What is the major criticism that
17 the Maryland Municipal League has on this subject?

18 MR. BROOKS: I really couldn't say.

19 THE CHAIRMAN: I would assume from the news-
20 paper accounts that their criticism is to taking away
21 from the Legislature and conferring on the County the

1 full power over municipal corporations, power of life
2 and death, so to speak.

3 MR. BROOKS: It is hard to say what additional
4 fear they have over the present situation, where no
5 municipalities are being incorporated.

6 THE CHAIRMAN: Mrs. Freedlander?

7 MRS. FREEDLANDER: Section 2, Article 11 (e)
8 which applies to classification has never been implemented.
9 There are no classifications of cities despite this pro-
10 vision.

11 MR. CLAGETT: There is one classification.

12 MRS. FREEDLANDER: One classification, but
13 this would be null and void anyway. There is just one
14 classification of cities.

15 MR. SAYRE: I don't see the problem.

16 THE CHAIRMAN: Any further question?

17 DR. BARD: How about distribution of funds?
18 Would that also apply there, that is, State funds that
19 go back to the County and then are redistributed to the
20 municipal corporations? This is something that would
21 still be held onto.

1 THE CHAIRMAN: Existing municipal corpora-
2 tions?

3 DR. BARD: Yes.

4 THE CHAIRMAN: Yes.

5 Dr. Burdette?

6 DR. BURDETTE: I have two questions. I am not
7 sure what we are now speaking to.

8 THE CHAIRMAN: 11.05, general.

9 DR. BURDETTE: Whenever I am in a minority
10 of one, I like to get recorded that way. We had a
11 motion to make a change in 11.01 (b). I should like to
12 be recorded as voting against it. The motion wasn't put,
13 but I don't want to be taken by unanimous consent. I am
14 very glad it came this way.

15 THE CHAIRMAN: I thought I did put the motion
16 for 11.01 (b). I am very sorry. There may be more than
17 one opposed. Let me go back to it, then.

18 DR. BURDETTE: This is the motion which was
19 made by Mr. Clagett, seconded by Mrs. Freedlander. In
20 any event, if the motion has been put, I should like
21 the record to show that I would have voted against it.

1 THE CHAIRMAN: Are you talking about the
2 motion to add the phrase, but excluding municipal cor-
3 porations?

4 DR. BURDETTE: Yes.

5 THE CHAIRMAN: I am sorry, I thought I had
6 put it. The question arises then on the motion to
7 amend Section 11.01 (b), by adding to the end, after
8 the words, representative governments, the phrase,
9 but excluding municipal corporations. Is there any fur-
10 ther discussion?

11 MR. DELLA: Are you still leaving in inter-
12 governmental authorities?

13 THE CHAIRMAN: Yes, but it has been moved up
14 so that this comes before the word, regional government.
15 Any further discussion? Are you ready for the question?
16 The question arises on the motion to amend Section 11.01
17 (b) by adding the phrase, but excluding municipal cor-
18 porations,^{to}/the end. All in favor, signify by saying
19 Aye. Contrary, No. Dr. Burdette wants to be recorded
20 as opposing the motion.

21 Now, back to 11.05.

1 Mr. Gentry?

2 MR. GENTRY: The second sentence of 11.05,
3 providing the dissolution, without either its consent
4 or the consent of the General Assembly, what do you mean
5 by its consent, the City Council or the voters of the
6 City?

7 MR. BROOKS: City Council.

8 MR. CLAGETT: I would say City Council would
9 be the answer, and that is what is meant here. I believe
10 I had better rephrase that more accurately, by the con-
11 sent of its governing body.

12 MR. GENTRY: Not voters, not petition?

13 MR. CLAGETT: No.

14 DR. BURDETTE: This leads me to a broader
15 question. I should think the answer is there that, its,
16 is the process provided in its charter, which permits
17 dissolution, and since it is highly likely that there
18 is no such process, and I should think if there is one,
19 it would have to be followed, and it would be illegal
20 not to follow it, but otherwise, if it is silent, I
21 should see no objection to its governing body. I am going

1 to ask some other questions if I may at this point. I
2 am not sure what this means, with respect to, or be sub-
3 ject to the withdrawal of any existing powers without
4 either its consent or the consent of the General Assembly
5 by law.

6 The reason I am confused on this, I am not
7 quite sure from the remarks made that we haven't abolished
8 all the municipalities, unless recreated, and therefore
9 the municipalities have to recreate them. I think we
10 have to face that. This comes from a comment of yours,
11 Mr. Chairman, that Article 11 (e) will not be extant
12 any more. That is going to be true. I should think
13 that the words, of any existing power, would carry the
14 inference that those powers that/had^{they} at the time of the
15 Constitution which would be the power given by Article
16 11 (e) would remain, and therefore that the changes
17 which they care to make enlarging their powers under
18 11 (e), which they can now do, still remain under this
19 language. Otherwise, I don't really see where we are.

20 MR. CLAGETT: Don't we actually say that when
21 we say any existing powers? Wouldn't that be just what

1 you are talking about?

2 DR. BURDETTE: I think so, but a little while
3 ago, the Chairman said that Article (e) would be entirely
4 dead. I think this breathes life into it.

5 MR. CLAGETT: I don't think the Chairman meant
6 that they would be dead because they can't be dead, because
7 they are the very powers that can't be withdrawn without
8 the consent of the governing body or General Assembly.

9 DR. BURDETTE: The reason I speak to this
10 point, and I think it is vastly important, and I don't
11 know how it is going to come out in the conversation,
12 but I should think that if the interpretation that I am
13 here tentatively and as a layman putting on it, that the
14 municipality would not be so infuriated by this clause,
15 if on the other hand the municipality can make no change
16 whatever in its affairs, without the consent of the County,
17 of course the municipalities will be infuriated, but if
18 they have the powers which Article 11 (e) now gives them,
19 they can make changes.

20 MR. CLAGETT: No.

21 THE CHAIRMAN: What powers do you understand

1 11 (e) gives to municipal corporations?

2 DR. BURDETTE: To draw their own charters and
3 to amend them as they see fit at any time under the
4 Express Powers Act; that is, amending of structure of the
5 government is not controlled by the Express Powers Act.

6 THE CHAIRMAN: No. That is what 11 (e) is, and
7 in answering the earlier question, I was supposing that
8 the second sentence of 11.05 was referring only to
9 existing powers in the charter, and that it was not pro-
10 viding for the continuance of any part of Article 11 (e),
11 so as to confer new powers on the municipal corporation
12 without consent of the County.

13 DR. BURDETTE: You may be right, but if the
14 word existing is to be construed as powers that they
15 now have, of course they have the powers in the charter
16 because they have the power to change the charter.

17 THE CHAIRMAN: I think the Committee intended
18 only the charter powers, but let me ask them. Is this
19 what the Committee intended, Mr. Clagett, that the muni-
20 cipal corporations should continue to have the powers
21 presently existing under its charter?

1 MR. CLAGETT: Yes, that is what we meant,
2 but what I am thinking is that, I am trying to reconcile
3 that answer with the thought that the Committee also
4 had, and that is that if the municipalities wanted to
5 exercise a new power of some kind, they would have to
6 get the power from the Counties.

7 THE CHAIRMAN: Precisely, so that the phrase,
8 existing powers in the second sentence, refers to exist-
9 ing powers conferred by the charter of the municipal
10 corporation.

11 MR. CLAGETT: Suppose they wanted to amend
12 their charter and exercise an existing power to amend,
13 to utilize a new power, which was in Article 23 (a),
14 or in 11 (e). They would then have to go to the County
15 to get that power to amend, but I am confused in my
16 thinking at the moment by the exercise of an existing
17 power in the charter to amend.

18 THE CHAIRMAN: Dr. Bard?

19 DR. BARD: Under 11 (e), Section 3, it reads
20 as follows: Any such municipal corporation existing or
21 hereafter created shall have the power and authority to

1 amend or repeal an existing charter or local law.

2 Now, if by way of illustration it had under
3 the phrase, existing power, this very power, Section 3,
4 if it continued, then they could amend under Section 3, in
5 any way within this frame of reference.

6 THE CHAIRMAN: That is what the Committee
7 says it does not intend.

8 MR. CLAGETT: That is correct.

9 THE CHAIRMAN: I think the solution is to
10 clarify the phrase, existing powers, by saying, existing
11 powers set forth in its charter. That is what you are
12 talking about.

13 MR. CLAGETT: I think that would clarify it.
14 What is your reaction, Dr. Burdette?

15 DR. BURDETTE: I think it would clarify it.
16 I don't mind putting it on the table, but I am opposed
17 to it. I am so much opposed to it that I would vote
18 against a Constitution that had it in it, and I would
19 suppose that anything that had anything to do with a
20 municipality in this State would do the same thing.

21 THE CHAIRMAN: Mr. Clagett?

1 MR. CLAGETT: I really didn't think Dr. Bur-
2 dette's objection here went that far because I am look-
3 ing now to the record back in the transcript at Page 215
4 of the proceeding at the Brown Estate, where the doctor
5 was dissenting from the charters of existing localities
6 being changed by the Counties, and here we said that
7 the Counties couldn't change the existing, and we are now
8 saying, the Counties can't change the existing charter
9 to take care of your objection at that time, so why do
10 you feel so fundamentally opposed to it?

11 DR. BURDETTE: It would seem to me clear,
12 this is, of course, the death knell for alternate powers
13 in the State before very long.

14 MR. CLAGETT: Isn't that view now because
15 right now by act of the General Assembly no new municipal-
16 ities can be created except by consent of the County on
17 dissolution. The County enters into the picture and
18 must take over the liabilities as well as the assets?

19 DR. BURDETTE: This, you see, is the statute
20 for a time and place. I think there would be no doubt
21 that that law could be amended by the General Assembly,

1 if a strong case were to be made that some County is
2 blocking a municipality, which is badly needed in the
3 State. That is quite different from a constitutional
4 matter. Yet I can see that as new cities develop, the
5 Counties don't want or may not want to allow this to
6 happen. The General Assembly can amend the present
7 statute for that purpose. That is not really the case.
8 If the municipalities to legitimately and naturally
9 grow --

10 MR. CLAGETT: How will they grow? They can't
11 without consent of the County.

12 DR. BURDETTE: That is exactly the point.
13 They will grow, if for nothing else, in technological
14 service. They don't have the power of annexation under
15 this arrangement. I can see circumstances in which this
16 is just like a man that has a house, built in 1880, with-
17 out electricity, and if he can't have electricity in
18 1950 without the consent of people who don't wish him
19 well anyhow, he is in a very difficult situation.

20 MR. CLAGETT: I appreciate what you say. If
21 you don't have a provision such as this, you have a basic

1 conflict in our constitutional draft between the
2 Counties exercising broad powers and the municipalities
3 exercising the same power in many instances. Somebody
4 had got to resolve that conflict.

5 DR. BURDETTE: My own answer to that has been,
6 you see, that the General Assembly, by general public
7 law should provide such arrangements as in its wisdom will
8 take care of the changing needs of municipalities.

9 MR. CLAGETT: Even if it shifts those powers
10 as it has in many instances to the Counties today, you
11 say it ought to be able to withdraw them tomorrow,
12 because it has done so insofar as the annexation pro-
13 visions? It has done so insofar as the dissolution
14 provision. It has done so insofar as creation of any
15 new municipalities are concerned. Those powers have
16 already been shifted by statute from the statute of the
17 General Assembly to the Counties.

18 DR. BURDETTE: Yes. As a matter of fact, I
19 don't think we are in too much trouble really about
20 denying creation of new municipalities because I suspect
21 they can be created by constitutional amendment, if they

1 were badly enough needed. We don't need any more 150
2 population towns created, but if you are really going
3 to say that Hagerstown and Cumberland are absolutely
4 straitjacketed the same as the Counties are going to
5 allow them to develop, this may be very tight business.

6 MR. CLAGETT: I think that brings into focus
7 something else. There were back in 1960, 152 municipal-
8 ities in the entire State. There are now 149, because
9 three of them have been dissolved. Of that remaining
10 149, some 115 are of a population of less than 2500
11 persons. Now, with that staring us in the face, we feel,
12 and the Committee, I thought, was in agreement, that
13 the trend of the future was toward a dissolution of
14 municipal corporations as a device of local subdivisions.

15 DR. BURDETTE: Unfortunately, we don't touch
16 that. We say they can't be dissolved without consent.

17 THE CHAIRMAN: Let me interrupt. This is an
18 interesting dialogue, but the rest of us are merely
19 sitting by. I don't think we are accomplishing anything.

20 I would like to get clear, and then anyone
21 who wants to make a motion can do so, what the recommen-

1 dation of the Commission is, or Committee is as to the
2 second sentence. Is the phrase, existing powers, in-
3 tended to refer to existing powers in the charter powers?

4 MR. CLAGETT: Yes. I am asking that we
5 insert there, Mr. Chairman, after the word powers, the
6 words, set forth in its charter.

7 MR. SCANLAN: I second that.

8 THE CHAIRMAN: Is there any objection to that?

9 DR. BURDETTE: I object.

10 MR. HOFF: I object to it, too. I don't
11 think -- I think we are treading on dangerous territory
12 when we say that we are taking away the powers that have
13 been granted to the municipalities under Home Rule. I
14 think you are mistaken when you talk about the power of
15 a County having the veto power against annexation, for
16 instance. It is my belief that municipalities can enact
17 without the consent of the County.

18 MR. BURDETTE: Right now.

19 MR. HOFF: Right now. I don't think that that
20 power ought to be removed. I don't think that power
21 ought to be put in the hands of the Counties. I think

1 that the municipalities as they exist today ought to
2 have the powers that they have today. Now, if you are
3 talking about the creation of new municipalities, all
4 right, but don't tamper with the powers that we have
5 given to municipalities under Home Rule.

6 MR. CLAGETT: Technically speaking --

7 THE CHAIRMAN: In order to get it before us
8 formally, would you make a motion?

9 MR. CLAGETT: I would move, Mr. Chairman, that
10 the second sentence of 11.05, Section 11.05 be amended,
11 after the words, existing powers, to include and the
12 words be inserted, set forth in its charter, so that it
13 would read, No existing municipal corporation may be
14 dissolved or be subject to the withdrawal of any existing
15 powers set forth in its charter, without either its
16 consent or the consent of the General Assembly by law.

17 THE CHAIRMAN: Is there a second?

18 MR. CLAGETT: I will further amend, by either
19 its, and change the word, its --

20 MRS. FREEDLANDER: Consent of its governing
21 body.

1 MR. CLAGETT: To, the consent of its govern-
2 ing body.

3 THE CHAIRMAN: Is there a second?

4 MRS. FREEDLANDER: Second.

5 THE CHAIRMAN: Do you have anything further to
6 say on the motion, Mr. Clagett?

7 MR. CLAGETT: No, sir. I think it is clear.

8 THE CHAIRMAN: Senator Hoff?

9 MR. HOFF: I still can't see the argument
10 that we should remove from the municipalities the powers
11 which they have today. I see no necessity for it.

12 THE CHAIRMAN: Mr. Bond?

13 MR. BOND: I would like to ask a question
14 right on that point: If a municipality within its
15 charter today has the power to amend its charter in order
16 to take care of changing situations, doesn't the language
17 as proposed by Mr. Clagett not straitjacket the municipal-
18 ities, because they have the existing power to amend,
19 and they can keep on amending in order to meet changing
20 situations?

21 THE CHAIRMAN: I don't think the language would

1 be susceptible of that interpretation. If so, it would
2 be far from clear. If you intend that, it ought to be
3 said expressly, I think.

4 MR. BOND: Then we are taking away the power
5 to amend the charter.

6 THE CHAIRMAN: That is exactly what Mr.
7 Clagett intends.

8 MR. CLAGETT: We mean that they shall be
9 nonconforming uses, which means that when you attempt
10 to change, alter, expand, et cetera, it must be with
11 the approval of the County.

12 THE CHAIRMAN: Dr. Bard?

13 DR. BARD: In answer to Mr. Bond, suppose a
14 County so desired not to provide for changes, merging,
15 dissolution, et cetera, what recourse would a municipality
16 have that finds itself in that County? In other words,
17 it would have to operate in terms of what it has fully,
18 because there are no provisions within the County struc-
19 ture to take care of changes.

20 THE CHAIRMAN: I would assume that Mr. Hoff's
21 answer to that would be that it could amend its charter

1 pursuant to its existing Home Rule provisions and exer-
2 cise the new power obtained under the amendment.

3 MR. HOFF: I am not sure whether they have
4 the power by charter amendment to annex. It is my
5 recollection that power is given to them. It is not
6 in the Constitution. It is in 23, in the statute.

7 MR. CLAGETT: It is in Article 23, and what
8 Article 23 (a) does is to bring the County into the
9 picture; in order for an annexation process to come about,
10 there must be a referendum of the new area, the old area.
11 Referring to what I was trying to do here, to briefly look
12 over the annexation provisions of Article 23 (a), Section
13 19, and answer the question, or answer the statement that
14 the Counties have no part in the annexation process by a
15 municipal corporation, and it is a little bit too de-
16 tailed --

17 MR. HOFF: I hope Mr. Clagett will accept
18 my word there is no provision in the act for the veto of
19 the County over annexation. The only power of veto that
20 the County has is in creation of new municipalities.

21 MR. CLAGETT: I will have to accept that

1 because I can't find anything to the contrary.

2 THE CHAIRMAN: Isn't the question that is
3 presented by this motion and the opposition to it the
4 very narrow question of whether existing municipalities
5 shall continue only with their existing charter powers
6 and no enlargement of those powers except with the con-
7 cept of the County or whether existing municipalities
8 can continue with their existing charter powers and any
9 other charter powers which they can obtain under the
10 existing charter by the amendatory process?

11 MR. HOFF: I don't think that goes far enough,
12 because I don't think that a municipality can include
13 anything in its charter that would permit it to annex
14 land adjacent to it with the protections that are now
15 set up under Article 23. I think that whatever we adopt,
16 we should adopt language that protects the Counties with
17 the powers given to them under Article 23; I am sorry, muni-
18 cipalities.

19 MR. DELLA: Mr. Chairman?

20 THE CHAIRMAN: Mr. Della.

21 MR. DELLA: Frankly, I don't see where the

1 fears are coming into this particular Section. You
2 have, for instance, any municipality of any size that
3 has any political power or political weight, in the for-
4 mation of a charter government for a County as such, they
5 are going to wield as much power as they can to make
6 sure that the existing powers that they now enjoy are
7 going to be incorporated in the power structure of the
8 new charter government.

9 THE CHAIRMAN: They may be unsuccessful,
10 Mr. Della.

11 MR. DELLA: That may be so. If they are un-
12 successful, they don't have the strength they think they
13 have.

14 MR. HOFF: I can assure Mr. Della that there
15 are many, many battles between municipalities and
16 Countys and a municipality of, let's say 2000 souls
17 isn't going to stand a chance against the County govern-
18 ment, particularly if that County government has the
19 power to choke to death by prohibiting further expansion.

20 MR. CLAGETT: I would like to ask John Brooks
21 for a point of information here. Under Article 23 (a),

1 as I recall it, not as I recall it, but as I am sure,
2 Prince Georges County is exempted. Consequently 23 (a)
3 doesn't apply.

4 MR. HOFF: The Washington Suburban Sanitary
5 District and Park and Planning Commission are exempt.

6 MR. CLAGETT: So is Prince Georges. We don't--

7 MR. HOFF: I don't think so, unless there was
8 a future amendment.

9 MR. CLAGETT: Section 4 providing Counties
10 exempt, none of the provisions of Paragraphs 1, 2 and
11 3 of this Article shall be construed to apply to Worces-
12 ter, Kent, Caroline, Allegany, Washington, Calvert,
13 Wicomico, Dorchester, Somerset, Baltimore, Prince Georges,
14 here we are, and St. Mary's Counties.

15 MR. HOFF: What are 1, 2 and 3?

16 MR. CLAGETT: The Express Powers.

17 MR. BROOKS: 1, 2 and 3 today really don't
18 apply to anybody.

19 MR. CLAGETT: That is about what it adds up
20 to.

21 MR. BROOKS: That is not where the Counties

1 get the powers.

2 MR. CLAGETT: That is not where the annex-
3 ation powers come in. 2 and 3 --

4 MR. BROOKS: 23 (a), as it is today, would
5 have to be just about completely rewritten under this
6 Constitution anyway. Its application under this Consti-
7 tution is almost nil. I think the policy question in-
8 volves what is the source of the power, any new powers
9 that a municipality can get if it is not from either
10 the State or the County, and the County will have been
11 granted all the powers in the nature of local govern-
12 mental powers under this Constitution, is broad grant
13 of powers so there are none left for the municipality
14 to have unless it gets it from the County involved.

15 MR. BOND: Aren't we saying that the existing,
16 that there should be some consideration given to the
17 existing municipalities in order to exist and keep going?

18 MR. BROOKS: The recognition is under this
19 second sentence that is proposed now, to protect them
20 in whatever powers are now in their charter, because
21 that outlines explicitly what powers they have, and what-

1 ever is in that charter in presently existing municipal-
2 ities, they are powers which the County can't interfere
3 with. They are under this provision protected from the
4 Counties that otherwise have a broad grant of power
5 earlier under one of the earlier Sections. I think that
6 is 11.03 (a), so that you have here a provision which is
7 a limitation to 11.03 (a), but if you don't have a limita-
8 tion of this kind, you are saying that 11.03 (a) is also
9 further qualified by whatever additional powers existing
10 municipalities seek to get through amendment without
11 any kind of restriction.

12 MR. BOND: That is right.

13 THE CHAIRMAN: Mr. Haile?

14 MR. HAILE: May I make a philosophical
15 observation here, Mr. Chairman? Why are we treating
16 municipal corporations more tenderly than we are treat-
17 ing Counties? We don't reserve this status quo for
18 Counties. A County can be changed or abolished by three-
19 fifths vote of the General Assembly.

20 MR. HOFF: You are giving Counties more
21 powers, not less.

1 MR. HAILE: A County can be dissolved by three-
2 fifths vote whether it wants to or not.

3 MR. SCANLAN: There are really three points
4 of view called up by this particular amendment: The
5 phrase, existing powers set forth in the charters, they
6 can't be taken from them without their consent, or the
7 consent of the General Assembly, would mean merely they
8 can keep what they now have in their charters. That
9 doesn't go far enough for Dr. Burdette. He wants them
10 to keep their power that they would have under 23 (2)
11 in effect. Senator Hoff would go even further and as
12 to new municipalities, ^{you} would not want them to be
13 restricted?

14 MR. HOFF: I did not bring in the question of
15 new municipalities. Dr. Burdette and I stand on the
16 same ground.

17 MR. SCANLAN: If you adopted Senator Hoff's
18 idea, you would have the situation wherein the future
19 a County might create a very large municipality like,
20 say, the City of Silver Spring might decide to become a
21 municipality with 160,000 people. That municipality

1 might have far less powers under what it was granted
2 by the County than the town of Somerset now has, that
3 I represent, with 800 families, that was created by the
4 State. I don't think we want the law permeated with that
5 type of incongruity. Maybe you have a point. Maybe we
6 are giving too much power to the County over the
7 municipality, but I think it has to be uniform. I think
8 you have to vote it up one way or another, up or down.

9 THE CHAIRMAN: Any further discussion? Are
10 you ready for the question? The question arises on
11 the amendment to the second sentence of Section 11.05,
12 to provide that it shall read as follows: No existing
13 municipal corporation may be dissolved or be subject to
14 the withdrawal of any existing powers set forth in its
15 charter without either the consent of the governing body
16 or the consent of the General Assembly. A vote Aye is
17 a vote in favor of the sentence as amended. All in
18 favor, please signify by a show of hands.

19 MR. BROOKS: Fourteen.

20 THE CHAIRMAN: Fifteen; Dr. Jenkins has his
21 hand up. Contrary?

1 MR. BROOKS: Four.

2 THE CHAIRMAN: The motion is carried, 15 to 4.

3 Any further discussion ? Is there any further
4 discussion of Section 11.05?

5 I have some questions then, Mr. Clagett.

6 When you refer to, in the third line, its municipal
7 corporations, I assume you mean municipal corporations
8 within its boundaries.

9 MR. CLAGETT: That is the County's municipal
10 corporations within its boundaries, which would mean
11 that Counties, Prince Georges, one half of Takoma Park,
12 only.

13 THE CHAIRMAN: That is what bothered me.
14 What about these multi-County municipal corporations?

15 MR. BROOKS: There aren't any.

16 MR. CLAGETT: Yes; Takoma Park is divided
17 by the boundary line between Prince Georges and Mont-
18 gomery, and part of it lies --

19 THE CHAIRMAN: Is it one municipal corporation?

20 MR. CLAGETT: It is one municipal corporation,
21 and it is in both Counties. Now, there, Mr. Chairman,

1 they are just going to have to get along as best they
2 can. It is like a warring mother and father, or a father
3 and a stepfather or two parents.

4 DR. BARD: Two parents? What is wrong with
5 two parents?

6 MR. CLAGETT: A double-headed monster.

7 THE CHAIRMAN: What is bothering me at the
8 moment is not that, but its municipal corporations left
9 me in doubt.

10 MR. CLAGETT: I want to give a more serious
11 answer. I think 11.06 would be the means by which they
12 would continue to exist, and they would have to do so
13 by compact or agreement.

14 THE CHAIRMAN: Shouldn't you say municipal
15 corporations within its boundaries instead of its
16 municipal corporations?

17 MR. CLAGETT: I would have no objection to
18 that. We just thought we had found a simple word instead
19 of three words.

20 THE CHAIRMAN: Is there any objection to the
21 phrase, within its boundaries, after municipal corporations,

1 in the third line?

2 MR. CLAGETT: I will accept that -- within
3 its boundaries.

4 THE CHAIRMAN: Mrs. Bothe?

5 MRS. BOTHE: Mr. Chairman, I have a question.
6 In the event that the power -- would it be theoretically
7 possible for the County's power to control its municipal-
8 ities to be withdrawn pursuant to the creation of a
9 regional government, in which case who would have control
10 of the municipality?

11 MR. CLAGETT: The regional government, if
12 actually that was one of the powers given by the Counties
13 by concurrent action or by the withdrawal by the General
14 Assembly.

15 MRS. BOTHE: The regional government would have
16 control of the municipalities within the entire region,
17 the same as the Counties?

18 MR. CLAGETT: If provided for.

19 THE CHAIRMAN: This is akin to another ques-
20 tion I had. This comes up out of the phrase, may delegate
21 powers to them. I take it that this is subject to the

1 overriding power of the General Assembly to withdraw
2 powers from the County.

3 MR. CLAGETT: That is true.

4 THE CHAIRMAN: When you say, may delegate
5 powers to them, you mean may delegate powers of the
6 County?

7 MR. CLAGETT: Delegate powers of the County
8 to them.

9 THE CHAIRMAN: Or --

10 MR. CLAGETT: I would have no objection to in-
11 serting, and may delegate powers of the County to them.

12 THE CHAIRMAN: Any objection?

13 MR. GENTRY: You haven't got anything else
14 to delegate.

15 MR. CLAGETT: I would think so. If there is
16 any question, that is what we mean. You might delegate
17 it, but the delegation might not be any good.

18 THE CHAIRMAN: It still doesn't quite meet
19 the problem in my mind. Suppose there is a delegation of
20 power and the General Assembly later withdraws the area
21 of the exercise of that power from all Counties. Does

1 this take it back from the municipal corporation?

2 MR. CLAGETT: I would think so.

3 THE CHAIRMAN: I should think it would be
4 desirable to have some phrase in there, may, subject
5 to the withdrawal powers of the General Assembly under
6 whatever Section it is, delegate powers to them.

7 MR. CLAGETT: All right.

8 DR. BURDETTE: I don't think the County can
9 delegate any powers it doesn't have.

10 THE CHAIRMAN: It may delegate them at a time
11 when it has them. Then the Legislature withdraws the
12 powers from the Counties.

13 MR. CLAGETT: I think that is implicit.

14 THE CHAIRMAN: I won't press it, if you are not
15 concerned about it.

16 MR. CLAGETT: I think it is implicit there.

17 THE CHAIRMAN: All right. Any further question
18 on this Section?

19 DR. BARD: Section 11.05?

20 THE CHAIRMAN: Yes.

21 DR. BARD: I am still concerned about that

1 may or should. I am not concerned about it in terms
2 of creation, but in terms of changing, merging, et cetera.
3 It seems to me that if they do nothing, well, I do be-
4 lieve that some of the points that have been raised are
5 true.

6 THE CHAIRMAN: The point is a County may
7 desire to do nothing, as Baltimore County.

8 DR. BARD: I am not concerned about those
9 Counties that now do not have municipal corporations, but
10 I am concerned about those that do have municipal cor-
11 porations. I don't think they would be fulfilling their
12 obligations should they choose to do nothing, and under
13 this they can choose to do nothing, even though they
14 now embody the municipal corporations.

15 THE CHAIRMAN: Why wouldn't it be possible for
16 them to choose to do nothing?

17 DR. BARD: It would. That is what concerns
18 me.

19 THE CHAIRMAN: What is wrong with it? Philo-
20 sophically, what is wrong with it?

21 DR. BARD: Philosophically, it would mean

1 there not only is a neutral attitude towards municipal
2 corporations, but there actually is an antagonistic
3 attitude.

4 THE CHAIRMAN: That may be what they want.

5 DR. BARD: That is what concerns me.

6 THE CHAIRMAN: Did you want to make a motion
7 with respect to it, Dr. Bard?

8 DR. BARD: No at 10 o'clock.

9 THE CHAIRMAN: Section 11.06.

10 MR. CLAGETT: In Section 11.06, we have pro-
11 vided for intrastate intergovernmental agreement, and
12 there I think we have only one matter of difference between
13 the present writing and that contained in the Sixth
14 Report, as that is that in the second sentence we pro-
15 vided that rather than by general law, both the County
16 or other civil -- wait a minute. I had better read the
17 sentence itself: Any County, other civil division, or
18 municipal corporation may, except to the extent prohibited
19 by law, and by that phrase is meant, prohibited by law
20 of the General Assembly, which may be a general law or
21 by law of the County, which may be by local law; the

1 municipal corporations can be restricted in their power
2 to compact or agree with the State or with any other
3 County, civil division or municipal corporation.

4 THE CHAIRMAN: Is this an area where we need
5 further division in view of the change we made as to
6 the power of the Legislature earlier, so that we should
7 say, except to the extent prohibited by public general
8 law, or public local law, so as to make clear that you
9 are not authorizing public local law by the Legislature?

10 MR. CLAGETT: I would think that the phrase
11 of
12 would take care/both of those; the phrase, by law,
13 would take care of both. If there is no question, I
14 have no objection, because the intent of the Committee
15 is, except to the extent prohibited by public general
16 or by public local law.

17 THE CHAIRMAN: But you mean public local law
18 passed by --

19 MR. CLAGETT: A County.

20 THE CHAIRMAN: A County?

21 MR. CLAGETT: Yes, not by the State, because
22 the State can no longer pass a public local law.

1 THE CHAIRMAN: We had that earlier amendment.
2 I don't know what Section it is. It troubles me.

3 MR. CLAGETT: Would it be 11.03 (a), where we
4 added an amendment?

5 THE CHAIRMAN: We amended 11.03 (c) because
6 of the same thing that I am concerned about now. In
7 other words, is this an authorization to the General
8 Assembly to enact a law which is not a public general
9 law?

10 MR. CLAGETT: No.

11 THE CHAIRMAN: I don't think so.

12 MR. CLAGETT: No. It is not.

13 THE CHAIRMAN: Any further question on 11.06?
14 Mr. Sayre?

15 MR. SAYRE: Just a question. When we talk
16 about interstate agreements, or intrastate --

17 DR. BARD: Intra.

18 MR. SAYRE: I was on another Section.

19 THE CHAIRMAN: Any further discussion?
20 Mrs. Bothe?

21 MRS. BOTHE: I wonder if there might be some

1 possible conflict between 11.06 and 11.05, as applied
2 to municipal corporations making intrastate agreements
3 which are beyond their existing charter powers?

4 MR. CLAGETT: If the County approved and there
5 was nothing that restricted it either by public local law
6 or by public general law, where would there be?

7 MRS. BOTHE: It says any County, other civil
8 division or municipal corporation may, except to the
9 extent prohibited by law, which is construed as being
10 public general and not constitutional law, so that if
11 a municipality under the language --

12 MR. CLAGETT: By law would include consti-
13 tutional.

14 MRS. BOTHE: That is my question.

15 MR. CLAGETT: That is why I would prefer to
16 hold onto by law, because it would include constitutional,
17 public general, public local.

18 MRS. BOTHE: All right.

19 MR. CLAGETT: We do have a situation, as in
20 Takoma Park, where you do have a municipality in two
21 Counties, and it may well have to have some medium to get

1 along with its father and stepfather.

2 THE CHAIRMAN: Any further question on 11.06?
3 Mr. Sayre?

4 MR. SAYRE: I come back to my first question
5 here. Wouldn't it be possible for a regional government
6 to have an agreement with a County outside of its region
7 or some arrangement wherein a regional government would
8 be involved?

9 THE CHAIRMAN: Civil division would include
10 it.

11 MR. SAYRE: Therefore, there is no reason
12 because of that to do anything to it.

13 THE CHAIRMAN: Sure. Any further question on
14 11.06?

15 Section 11 -- blank.

16 MR. CLAGETT: Before we get to Section 11 blank,
17 which really is outside of our local government Article,
18 the Committee believes, I would like to have the Commis-
19 sion consider a separate Article to be entitled Article
20 12, dealing with intergovernmental relations, and that
21 Article would read as follows: Section 12.01, inter-

1 governmental cooperation. Nothing in this Constitution
2 shall be construed to prohibit, one, the cooperation of
3 the government of this State with any other governments
4 or, two, the cooperation of the government of any region,
5 County or other intergovernmental authority with any one
6 or more other governments. I would so move.

7 MR. SAYRE: Second.

8 THE CHAIRMAN: Is there a second?

9 MR. SAYRE: Second.

10 THE CHAIRMAN: Would you tell us why?

11 MR. CLAGETT: We feel that because of the
12 proximity of the large Counties, such as Montgomery,
13 Howard, Prince Georges, bordering the District of Colum-
14 bia, as well as possibly others, which border on neigh-
15 boring States, there should be some constitutional
16 writing which would further the cooperative effort of those
17 Counties with the District of Columbia in dealing with
18 problems which transcend the boundaries of the County and
19 are interrelated with those of the District of Columbia
20 or other States.

21 We feel that the argument of some of the per-

1 sons who have appeared before the Committee, and who
2 have appeared before the Commission, are ones which would
3 justify this language being included in the Constitution,
4 even though, of course, it may be quite true that there
5 is nothing presently in the Constitution, in the Maryland
6 Constitution, that would prohibit the Counties from
7 entering into agreement, or the State entering into
8 agreement, except with Federal Constitution restrictions
9 in the compact clause. It would be a means whereby this
10 method would be available, pointed up, and direct the
11 cooperative effort in that direction to solve the problems
12 which are related to those areas.

13 THE CHAIRMAN: Any further discussion?

14 I think, I think personally there is serious
15 problems with such a provision, because I would be fear-
16 ful that this would mean perhaps that a municipality or
17 a County or some other civil division, regional govern-
18 ment, could enter into arguments with another State or
19 with the Federal Government without the consent of and
20 against the desires of the State. This is an area that
21 is becoming exceedingly touchy right now with the broad

1 program of the Federal Government for aid, direct aid
2 to Counties and municipalities, without going through
3 State channels. There is some general feeling that this
4 is unwise, and I have no strong notions one way or the
5 other about that, but I would hesitate to attempt in this
6 Constitution to foreclose it, and I would be fearful that
7 what you propose would perhaps tie the hands of the
8 General Assembly, if the General Assembly decided that
9 in the future all direct aid from the Federal Government
10 to Counties and cities ought to funnel through the State
11 Government.

12 MR. CLAGETT: Well, our Article would take
13 care of regions, Counties or intergovernmental authority.
14 It would not include other civil divisions or municipal
15 corporations. Now, we provide merely that nothing in
16 the Constitution shall be construed to prohibit, but if
17 the General Assembly found that there was anything that would
18 require action by it, there would be nothing to prevent
19 it from doing so by general law, applicable to all
20 Counties.

21 DR. BURDETTE: Is that correct? If I understand

1 you correctly, the State could add additional agreements,
2 but it couldn't abstract from these agreements, could it?

3 MR. CLAGETT: It couldn't subtract from the
4 agreement. The protection of the contract would take
5 care of that, if there was an agreement.

6 DR. BURDETTE: That is the danger that the
7 Chairman is speaking about.

8 THE CHAIRMAN: What I am supposing is that
9 if a Constitution says nothing in this Constitution shall
10 prevent me from agreeing with Dr. Burdette that the
11 sun is shining, that is tantamount to saying that he and
12 I shall have the authority to make such an agreement.

13 MR. CLAGETT: Let me ask you this. Where is
14 there anything in the Constitution that does prohibit
15 the cooperation of Prince Georges County with the District
16 of Columbia?

17 THE CHAIRMAN: I don't know that there is.
18 I am content to leave it that way, but I don't want to
19 create a situation that gives a constitutional blessing
20 to this without a great deal more thought than you can
21 possibly give to it at this point.

1 MR. CLAGETT: The model Constitution is really
2 the author of this language and insofar --

3 THE CHAIRMAN: That provision in the model
4 Constitution has been subject to a lot of criticism recent-
5 ly. That is part of what is behind it.

6 MR. CLAGETT: We don't go quite so far as the
7 model Constitution. We have eliminated the whole of
8 Subsection 3 of the model Constitution, and we have
9 revised the language of Subsection 2. We merely say that
10 the Constitution, and I know of nothing in the Consti-
11 tution that does prohibit, the cooperation of the
12 government of the State of Maryland, with any other
13 governments, or the regions or Counties insofar as coopera-
14 tion. Right now there is existent a very active effort
15 to take care of the mass transit problem between the
16 three Counties and the District of Columbia, and nobody
17 is interfering with that, except themselves.

18 THE CHAIRMAN: Dr. Bard?

19 DR. BARD: I just think that the whole concept
20 is so terribly important that I would like to see it in
21 writing rather than through dictation, and study it for

1 a time. I don't think this is the moment to ask us to
2 pass judgment on something like that, that important.

3 MR. CLAGETT: It is in writing if you will
4 refer to the Fifth Report, and Page 7 of that Fifth
5 Report; preliminary draft, not for publication, Fifth
6 Report.

7 DR. BARD: It isn't on the agenda for today.

8 MR. CLAGETT: I am caught by that one.

9 DR. BARD: I was not prepared. I think this
10 is too important a concept to set forth for a vote at
11 this hour.

12 MR. CLAGETT: Would you want to table it? I
13 have made the motion. In fact, I feel that it is -- I
14 am very much persuaded by the presentation of Dean Ford-
15 ham, and I can't recall the name of the person that
16 appeared at the very early meetings of the Commission
17 but his comments will appear of record in the minutes of
18 that meeting or the transcript. I am very much persuaded
19 by the argument that was then given to us, that this would
20 be a very helpful clause in stimulating cooperative effort
21 between States and the units as defined, subdivisions

1 as defined with other States.

2 THE CHAIRMAN: Any further discussion?

3 Mr. Sayre?

4 MR. SAYRE: Mr. Chairman, because of the
5 importance of this, I think it should maybe be referred
6 for discussion to our next meeting and that the text be
7 available with any comments at that time.

8 THE CHAIRMAN: There is only one way to
9 accomplish that, unless you can persuade Mr. Clagett.

10 MR. SAYRE: I move that this be tabled, to be
11 brought off the table at the next meeting, and that
12 Mr. Clagett prepare a text with any comments.

13 THE CHAIRMAN: Is there a second?

14 DR. BARD: Second.

15 THE CHAIRMAN: The motion is not debatable.
16 All those in favor of the motion to table, signify
17 by saying Aye. Contrary, No. Mr. Clagett votes No.

18 MR. CLAGETT: I don't make much noise in doing
19 it, but I will hold up my hand.

20 THE CHAIRMAN: Section 11 blank.

21 MR. CLAGETT: Here it is, the recommendation

1 of the Committee that where the General Assembly creates
2 jobs or expenses incidental to the establishment and ad-
3 ministration of agencies, offices or positions, except
4 local Boards of Education, or elections required by
5 general law, they pay the costs and expenses thereof.

6 We feel that if you do not have such a pro-
7 vision in the Constitution, it would be impossible for
8 the Counties to properly budget, and carry out their
9 responsibilities and the State would be without the inter-
10 ference by the State.

11 We do not feel that this is property within
12 the local subdivision Article. We feel it should proper-
13 ly come within the Legislative Article, but because of
14 its necessity, we have gone ahead and drafted this
15 and therefore present it to you to be included, to be
16 left up to the Committee on Style as to where it should
17 go.

18 THE CHAIRMAN: May I be devil's advocate for
19 a moment in an effort to save time at 10:15? Wouldn't
20 the provision such as this completely hogtie the Legis-
21 lature in adopting any public general law, saying that

1 the Counties shall do this, that or the other, provide
2 this or that or the other advice?

3 MR. CLAGETT: All they have to do is pay for
4 it.

5 THE CHAIRMAN: That is just the point. It
6 might be a local service, that the State may say that
7 the Counties should provide, and be akin to, but dif-
8 ferent from Boards of Education, and yet this would be
9 putting in as a matter of constitutional prohibition
10 any right of the Legislature to require the Counties
11 generally to do such a thing.

12 MRS. FREEDLANDER: A point of order,
13 Mr. Chairman. Didn't we approve of this at some previous
14 time, this provision?

15 MR. BROOKS: This was a part of the Second
16 Report of this Committee.

17 MRS. FREEDLANDER: I thought the Commission
18 already approved this.

19 MR. BROOKS: It accidentally got left out
20 along the way and got reenacted.

21 MRS. FREEDLANDER: We had lengthy discussion

1 and debate on this and approved it.

2 THE CHAIRMAN: I don't recall any lengthy dis-
3 cussions of this in the Commission.

4 MR. BROOKS: I wouldn't say how lengthy it
5 was.

6 MR. FREEDLANDER: We talked in terms of the costs,
7 who should pay for them.

8 MRS. BOTHE: That was the Judiciary.

9 MR. BROOKS: This was the first recommendation
10 made by this particular Committee as a policy question.

11 THE CHAIRMAN: A policy question. It was dis-
12 cussed, yes.

13 DR. BURDETTE: What happened to the Judiciary
14 provision? Do we have any provision --

15 THE CHAIRMAN: Salaries of the Judiciary shall
16 be Statewide, yes.

17 MRS. BOTHE: That is a different dish of tea.

18 MRS. FREEDLANDER: I think the minutes will
19 show we approved of this in principle.

20 THE CHAIRMAN: As a matter of policy, that is
21 right.

1 Is there any further discussion?

2 MR. SAYRE: I am not sure I understand the pros
3 and cons on this. Is this the time to understand them?

4 MRS. BOTHE: Mr. Chairman, I gather the present
5 Constitution doesn't have any analogous provisions at
6 all. It just has certain offices provided for by State
7 salary, and most of them not. Has anybody studied up
8 to see exactly what offices would be affected by this
9 that aren't presently State financed?

10 MR. HAILE: Mr. Chairman, we have many items
11 in our budget that are required to be included in our
12 budget by State law. For example, for medical examiners
13 for Baltimore County, we must budget money to pay so much
14 per corpse that they examine. It is this type of thing
15 that this is directed at. I don't agree that we have
16 difficulty budgeting, because we know ahead of time. We
17 can make our estimates, but we know we have to include
18 them in the budget and can't cut the items.

19 THE CHAIRMAN: Mr. Hargrove?

20 MR. HARGROVE: This is a two-way sword, isn't
21 it? Also, the Counties in their budgeting processes are

1 pinched and will not creat services which I think the
2 General Assembly is more or less forcing them to do. I
3 think in the area, for example, of mental health, is
4 an area in which the Counties are involved. There are
5 areas even in education. I think kindergartens and
6 things of that sort which are aside from the Board of
7 Education which perhaps the General Assembly in its wis-
8 dom might feel is necessary and of course, the County
9 looking at its budget will feel they can't provide.
10 This, I think, is something that ought to be studied from
11 both ends.

12 THE CHAIRMAN: It would be my opinion that
13 this Section would require the State to pay the cost of
14 the Baltimore City Police Department and administration
15 of the municipal courts of Baltimore City, and the People's
16 Court of Baltimore City.

17 MR. HOFF: Any regional County that might be
18 created.

19 MR. BOND: There is a form whereby a certain
20 share of expenses are shared by the local subdivisions
21 and by the Counties, cities and State. I know in Welfare

1 in order to have certain programs, the local subdivisions
2 have to participate. I think this is too far-reaching
3 for us to approve. It upsets the entire financial
4 structure of the State. I think it goes beyond what a
5 Constitution should do.

6 MR. CLAGETT: Specifically this matter is
7 dealt with in the Third Report of the Committee, dated
8 May 27, 1966, and there the recommendation was
9 that where the State Legislature created jobs, and govern-
10 ment agencies, which must be paid for by the local
11 subdivisions, the Committee felt that the Constitution
12 should require that any such State Legislature requiring
13 financial payment by the local subdivisions must first
14 be submitted to the local government of the subdivision
15 for approval and also subject to a permissive referendum
16 by the voters of the subdivision.

17 We found that that was too cumbersome to try
18 to deal with insofar as constitutional language was con-
19 cerned, and therefore boiled it down to the present
20 recommendation that you have got in front of you. I don't
21 believe the Commission as such has ever acted upon it,

1 and certainly --

2 THE CHAIRMAN: Would you, would the Committee
3 intend that the cost of the administration of Baltimore
4 City Police Department be a State expense?

5 MR. BROOKS: That was one, if required or
6 established by the State, that was one of the things that
7 was discussed last time as one of the things that would
8 be desirable for the State to pay for if the State were
9 going to require it.

10 THE CHAIRMAN: The State does provide for it.

11 MR. CLAGETT: If the State wants to pay for it,
12 they can leave it to Baltimore City and stay out of it
13 which they ought to.

14 DR. BURDETTE: Didn't I understand you to say,
15 make the State pay for municipal courts? Haven't we
16 already provided for that by the provision that the County
17 shall have no assessing power?

18 THE CHAIRMAN: Yes.

19 MR. BOND: The whole matter of contributions
20 by subdivisions is a matter of budgeting. You have the
21 James, Cooper, and other formulas. I think it is too

1 detailed and should not be in the Constitution.

2 THE CHAIRMAN: Dr. Bard?

3 DR. BARD: What would happen to the grant in
4 aids program? It would be State owned, the proportional
5 grant in aid.

6 MRS. BOTHE: What is the point of it?

7 MR. CLAGETT: The point of it really is to
8 keep the State from moving into an exercise of local
9 affairs without paying for it, and if they see fit to do
10 so, they can provide the funding, rather than impose upon
11 the Counties responsibilities and salaries and offices
12 which the Counties do not want.

13 MRS. BOTHE: We are pretty well restricted
14 now.

15 THE CHAIRMAN: Mr. Della?

16 MR. DELLA: Mr. Chairman, I think this Section
17 is going to create an awful lot of problem. Many of the
18 Counties come down after different divisions are incor-
19 porated that have to be passed by the General Assembly,
20 new jobs created, et cetera. This Section could be
21 interpreted, because it is being set up by the General

1 Assembly, the General Assembly will be obligated to pay
2 expenses on it. I have found that when the State itself
3 sets up an operation, they generally provide the money
4 to take care of that operation, and I don't think there
5 is going to be any problem; if you delete this or leave
6 it out, I think it would be better than if you left it in.

7 THE CHAIRMAN: Mr. Brooks?

8 MR. BROOKS: One reason the municipalities, a
9 lot of them, have had the Legislature establish jobs
10 that they have requested them heretofore was because of
11 the lack of Home Rule powers that will be granted under the
12 new Constitution, so that under the new Constitution,
13 they have all the powers to establish whatever offices they
14 want. Another area of consideration that was discussed
15 back in May; which is a good example of what this addresses
16 itself to in regards to elections, for instance, is the
17 provision at the present time by the State of various
18 special elections from time to time. The history in Mary-
19 land is that the State has never paid for the cost of a
20 special election, which it has authorized or called for
21 through general public laws in the State. All of this

1 expense has always been placed upon local government,
2 which means that when special elections are called during
3 the midst of a fiscal year of local municipalities,
4 the local governments have to absorb into the budget
5 that is already drawn up and allocated the cost of a
6 special election. One of the effects of this, as I recall
7 the discussion, was that this would mandate that if the
8 State provides for a special election, then/would also
9 have to furnish the cost for holding such an election,
10 and as we mentioned before, the cost of these today are
11 running something like \$750,000 to a million dollars of
12 expenses, to give you some idea of one area of State im-
13 position of expenses.

14 MR. DELLA: Where would the State get the
15 money any more than the municipality or a County would
16 get it?

17 MR. BROOKS: Out of its budget if it saw fit
18 to provide for the service.

19 MR. CLAGETT: Or out of its surplus.

20 DR. BURDETTE: That is exempt, isn't it?

21 MR. CLAGETT: Specifically provided for; only

1 local Boards of Education are exempted.

2 DR. BURDETTE: Except local Boards of Educa-
3 tion or elections.

4 MR. CLAGETT: There, a comma there.

5 MR. BOND: Mr. Chairman, this goes to the
6 whole cornerstone of taxation and the tax structure of the
7 State and does not belong in the Constitution.

8 THE CHAIRMAN: We have no motion before us at
9 the moment. Does anybody desire to make a motion so we
10 can act?

11 MR. CLAGETT: I so move, Mr. Chairman.

12 THE CHAIRMAN: What?

13 MR. CLAGETT: I move that the Committee on
14 Style determine the appropriate place for the Section
15 blank, appearing on Page 4 and on Page 21 as drafted by
16 the Committee, except that might be able to take the
17 phrase, and the provision for acceptance of local Boards
18 of Education, and put it down, to avoid Dr. Burdette's
19 objection.

20 THE CHAIRMAN: I take it that somewhere in that
21 long motion is intended the approval of this Section?

1 MR. CLAGETT: I think the motion has been
2 very clear.

3 MR. GENTRY: An appropriate place.

4 THE CHAIRMAN: Is there a second? Is there
5 a second?

6 MR. DELLA: I will second so you can get a
7 vote on it.

8 THE CHAIRMAN: Any further discussion?

9 MRS. BOTHE: Has there been any discussion
10 with the Finance Committee on this subject?

11 MR. CLAGETT: The Finance Committee referred
12 it back to us. They said it was our problem.

13 MR. BOND: I don't remember that. I am on the
14 Finance Committee.

15 MRS. FREEDLANDER: The Chairman spoke for the
16 Committee.

17 MR. CLAGETT: He told us it was our problem so
18 we have met the problem.

19 MRS. BOTHE: I don't know what the implications
20 of a vote on this are. I am inclined not to like it.

21 MR. BOND: Mr. Chairman, I will move a substi-

1 tute motion if I may, just to move it forward. I move
2 that the provision not be included in the Constitution.

3 THE CHAIRMAN: That is the same as a negative
4 vote on the motion, I would say.

5 MR. BOND: All right.

6 THE CHAIRMAN: Are you ready for the question?
7 A vote Aye is a vote approving the substance of this
8 Section with a direction to the Committee on Style to
9 find an appropriate place for it in the Constitution.
10 A vote No --

11 MR. CLAGETT: Presumably the Legislative
12 Committee.

13 THE CHAIRMAN: A vote No is a vote disapprov-
14 ing this Section. Are we clear on that? A vote Aye
15 approves; a vote No disapproves. All in favor, signify
16 by a show of hands.

17 MR. BROOKS: Three.

18 THE CHAIRMAN: Contrary?

19 MR. BROOKS: Eleven.

20 THE CHAIRMAN: The motion is lose, 3 to 11.

21 Anything further on your Report, Mr. Clagett?

1 MR. CLAGETT: Thank goodness, Mr. Chairman,
2 no.

3 THE CHAIRMAN: Let me say two things: First,
4 that I am very grateful to all of you for your patience.
5 We are an hour behind the time we said we would adjourn
6 any of these meetings. Secondly, the apologies of both
7 myself and of Mr. Brooks for so completely misjudging
8 the meeting. We thought that it would be possible to
9 finish by late afternoon, and obviously, we can't even
10 finish in three sessions.

11 This seriously poses a problem. In view of
12 the earlier discussion, I don't see how we can have a
13 meeting prior to December 3. We will have a meeting on
14 December 3. It seems to me now that in all likelihood
15 that will have to be a two-day meeting. It will still
16 have to be the wrap up, so far as a meeting of the Com-
17 mission is concerned.

18 At this hour of the night I would be loath to
19 ask for a show of hands as to whether the two-day meeting
20 should be Friday, Saturday, or Saturday, Sunday. I would
21 rather take a poll when you are feeling a little better

1 and your minds are fresher.

2 Is there anything anybody else wants to bring
3 up?

4 MRS. FREEDLANDER: Mr. Chairman, are you going
5 to reconsider the selection of delegates to the Conven-
6 tion at the next meeting?

7 THE CHAIRMAN: Yes. This is a matter I would
8 like to consider. Has Mr. Scanlan had to leave?

9 MR. BROOKS: Yes.

10 THE CHAIRMAN: I would like to mention that
11 to you. I am glad you reminded me of it. I have been
12 receiving, Mr. Brooks has been receiving, and I daresay
13 most Members of the Commission has been receiving a
14 tremendous feedback from the action of the Commission in
15 recommending that delegates be elected on a Countywide
16 basis. I still do not know what the proper or best
17 method is. I think there are indications that there will
18 be a very large number of persons anxious to file for
19 election as delegates to the Convention, and curiously
20 enough, the indications that I have received are that there
21 will be a very large number of highly qualified persons,

1 and at least a substantial number of persons as to whom
2 we would not make that statement.

3 This poses a problem, because the sheer force
4 of numbers, and the resultant dispersal of the total
5 vote among a large number increases the possibility that
6 a person supported by little other than a determined
7 group of people, will be elected.

8 I have talked to a number of people in influ-
9 ential and political matters, without getting from any-
10 body what seems to be a surefire answer. I suggest that
11 all of you consider Countywide, district election and
12 a mixture of both. That is, a mixture of Countywide and
13 district, so that in a given County you might have a
14 certain number elected Countywide and a certain number
15 by districts. The situation in Baltimore City is even
16 further complicated, but it might lend itself to something
17 of that sort.

18 In addition, I think that all of you are
19 probably receiving inquiries from persons interested in
20 running for election, asking what steps are being taken
21 to encourage people to run, et cetera. We have at the

1 office received many such inquiries, and we have been
2 attempting to avoid having any particular groups jell
3 on any method or groups of candidates at the present time.
4 We think it is too early, and it seems very likely that
5 it is going to be necessary to have some coordination
6 among the various groups which would be supporting candi-
7 dacy of very promising delegates.

8 In addition, we will undoubtedly have to work
9 out in cooperation with the Legislature and with the
10 political parties some method of endorsement, either of
11 slates or of procedures for selecting qualified candidates
12 by the leaders of both parties.

13 This is one of the reasons why it seems to me
14 that it is going to be imperative that the next meeting
15 be a two-day session. The questions are crucial. I don't
16 think the answers are easy to come by, and I think it is
17 going to require considerable discussion, so I suggest
18 that you talk to as many people as you can and get their
19 views, and be doing a great deal of thinking about it be-
20 tween now and December 3.

21 MR. DELLA: It will be on the agenda for the
next meeting?

1 THE CHAIRMAN: Yes, indeed.

2 DR. BARD: Is there a possibility, Mr. Chair-
3 man, we might have a portion of one of the two days at
4 Goucher?

5 THE CHAIRMAN: I am not sure I follow you.

6 DR. BARD: There will be a meeting at Goucher
7 College on the 9th and 10th, is that correct?

8 THE CHAIRMAN: That is correct.

9 MR. BROOKS: Not of the Commission, necessarily.
10 The Commission Members will be invited.

11 DR. BARD: I understand that. What I am
12 thinking is, since a goodly number of us might
13 be there on the 10th, would there be a possibility since
14 that will be a short one --

15 THE CHAIRMAN: I am not so sure it will be a
16 short one.

17 MR. CLAGETT: What dates are those dates?

18 MR. BROOKS: Friday and Saturday, 9th and
19 10th.

20 THE CHAIRMAN: One other thing that I very much
21 hope we can do will be to get a clean copy of all the

1 constitutional provisions thus far approved and send it
2 to you. Then I would greatly appreciate it if each man
3 and woman would consider he or himself a Committee of one
4 to hunt for the omissions and the oversights and the
5 errors that are bound to creep in.

6 MR. HAILE: May I make a suggestion on that
7 particular copy, that you number the lines on each page,
8 please?

9 THE CHAIRMAN: All right.

10 MR. BROOKS: We get a lot of questions concern-
11 ing a lot of offices of profit and trust. One of the
12 research assistants is compiling a table which we hope
13 to mimeograph and make available as soon as possible, but
14 in the meantime, there are a lot of questions concerning
15 this. There have been literally hundreds of opinions
16 rendered by the Attorney General's office on numerous
17 specific offices, all the way from Town Commissioners
18 to County Commissioners, up through the trustees of uni-
19 versities, et cetera, on which of necessity offices are
20 offices of profit or trust, and as you might imagine, it
21 is quite a hodgepodge. It is no particular system, but

1 we do have that information, and some of you may get
2 inquiries wanting to know about particular positions, and
3 we hope to have this as refined as possible in order to
4 answer these questions.

5 THE CHAIRMAN: The closest one I think you in-
6 dicated, John, was the Convention to ratify the Twenty-
7 first Amendment.

8 MR. BROOKS: In regard to whether or not the
9 office of Convention delegate is an office of profit or
10 trust, there was a Convention some years ago to ratify
11 the Twenty-second Amendment, where the Attorney General
12 rules that, being a delegate, even though there was no
13 compensation to such a convention was an office of profit
14 or trust as far as that analogy is concerned, with being
15 a delegate to the Constitutional Convention is concerned.

16 THE CHAIRMAN: I might add that this problem
17 doesn't seem to plague other States at all. They have
18 judges, legislators and numerous other officeholders as
19 delegates to the convention, and accepted as the thing.

20 MR. CLAGETT: Actually, what is the philosophy
21 that says that a holder of another office of trust can't

1 be a delegate to the Convention?

2 MR. BROOKS: This is the Maryland Constitution.

3 THE CHAIRMAN: Article 45 of the Declaration
4 of Rights and Section 35 of Article 3.

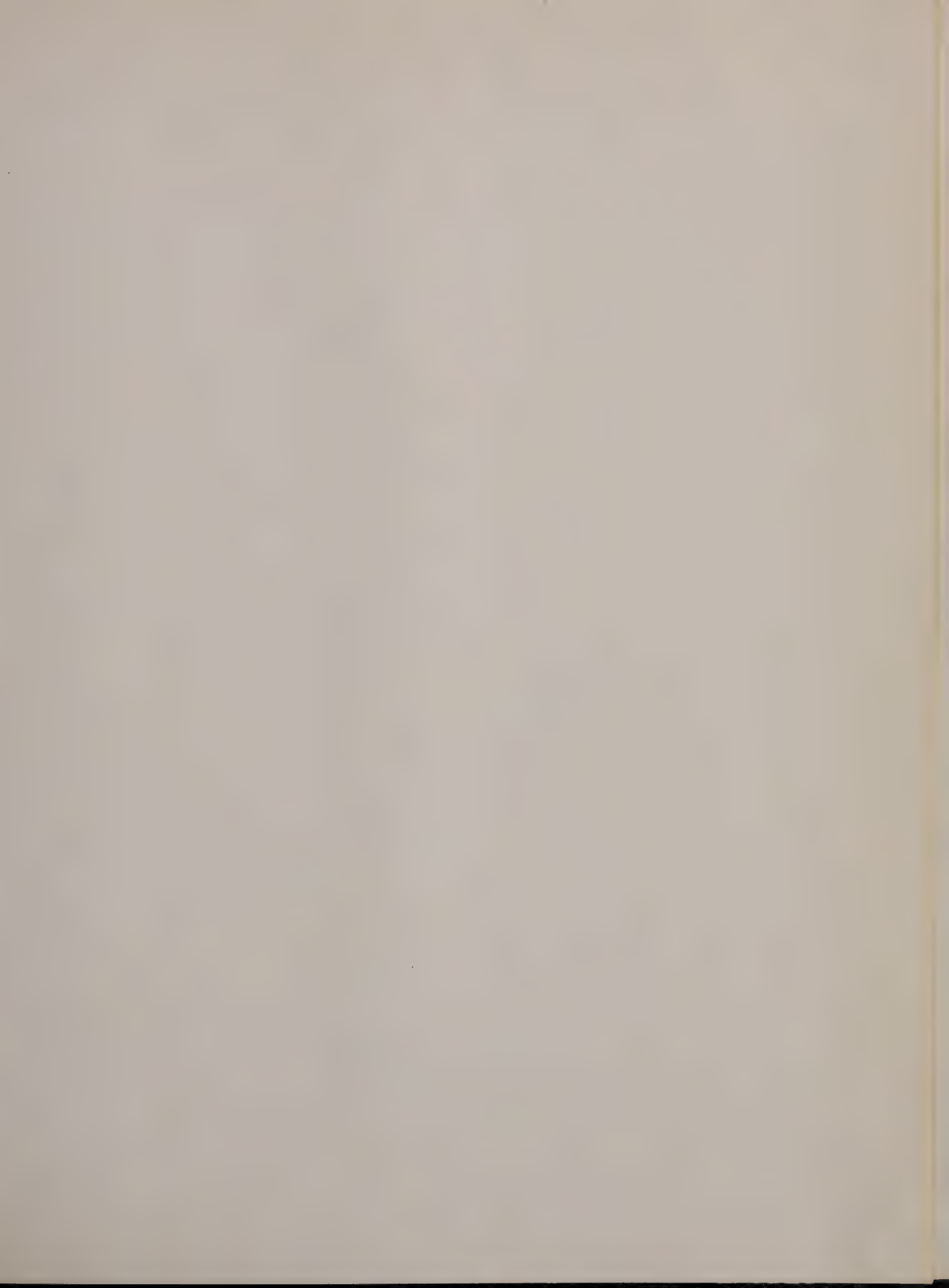
5 MR. HOFF: The philosophy is one of conflict
6 of interest.

7 DR. BARD: That is right. Do we need a motion
8 to adjourn?

9 THE CHAIRMAN: No. Thank you very much.

10 (Meeting concluded.)

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